

267 HJ SB 354 - SB 407 267

§ 301.7701-2 PROCEDURE AND ADMINISTRATION

agency relationship, similar to that existing in an ordinary professional partnership, exists between the members of a professional service organization, such organization lacks the corporate characteristic of limited liability.

(5) (i) If the right of a member of a professional service organization to share in its profits is dependent upon the existence of an employment relationship between him and the organization, free transferability of interests within the meaning of paragraph (e) of this section exists only if the member, without the consent of other members, may transfer both the right to share in the profits of the organization and the right to an employment relationship with the organization.

(ii) The corporate characteristic of free transferability of interests exists in a modified form within the meaning of paragraph (e) (2) of this section when a shareholder in an ordinary business corporation can transfer his interest in such corporation only after having offered such interest to the other shareholders at its fair market value. In such a case, the so-called right of first refusal applies only to an interest which is a right to share in the profits, the assets, and the management of the enterprise. However, if the interest of a member of a professional service organization constitutes a right to share in the profits of the organization which is contingent upon and inseparable from the member's continuing employment relationship with the organization, and the transfer of such interest is subject to a right of first refusal, such interest is subject to a power in the other members of the organization to determine not only the individuals whom the organization is to employ, but also who may share with them in the profits of the organization. The possession by other members of the power to determine, in connection with the transfer of such an interest, whom the organization is to employ is so substantial a hindrance upon the free transferability of interests in the organization that such power precludes the existence of a modified form of free transferability of interests. Therefore, if a member of a professional service organization who possesses such an interest may transfer his interest to a qualified person who is not a member of the organi-

zation only after having first offered his interest to the other members of the organization at its fair market value, the corporate characteristic of free transferability of interests does not exist.

Added Nov. 3, 1967, 22 F.R. 15241.

§ 301.7701-3 Partnerships

(a) In general. The term "partnership" is broader in scope than the common law meaning of partnership and may include groups not commonly called partnerships. Thus, the term "partnership" includes a syndicate, group, pool, joint venture, or other unincorporated organization through or by means of which any business, financial operation, or venture is carried on, and which is not a corporation or a trust or estate within the meaning of the Internal Revenue Code of 1954. A joint undertaking merely to share expenses is not a partnership. For example, if two or more persons jointly construct a ditch merely to drain surface water from their properties, they are not partners. Mere co-ownership of property which is maintained, kept in repair, and rented or leased does not constitute a partnership. For example, if an individual owner, or tenants in common, of farm property lease it to a farmer for a cash rental or a share of the crops, they do not necessarily create a partnership thereby. Tenants in common, however, may be partners if they actively carry on a trade, business, financial operation, or venture and divide the profits thereof. For example, a partnership exists if co-owners of an apartment building lease space and in addition provide services to the occupants either directly or through an agent.

(b) Limited partnerships—(1) In general. An organization which qualifies as a limited partnership under State law may be classified for purposes of the Internal Revenue Code as an ordinary partnership or as an association. Such a limited partnership will be treated as an association if, applying the principles set forth in § 301.7701-2, the organization more nearly resembles a corporation than an ordinary partnership or other business entity.

(2) Examples. The principles of this paragraph may be illustrated by the following examples:

Example (1). Three individuals form an organization which qualifies as a limited partnership under the laws of the State in which the organization was formed. The purpose of the organization is to acquire and operate various pieces of commercial and other investment property for profit. Each of the three individuals who are general partners invests \$100,000 in the enterprise. Five million dollars of additional capital is raised through contributions of \$100,000 or more by each of thirty limited partners. The three general partners are personally capable of assuming a substantial part of the obligations to be incurred by the organization. While a limited partner may assign his right to receive a share of the profits and a return of his contribution, his assignee does not become a substituted limited partner except with the unanimous consent of the general partners. The life of the organization as stated in the certificate is 20 years, but the death, insanity, or retirement of a general partner prior to the expiration of the 20-year period will dissolve the organization. The general partners have exclusive authority to manage the affairs of the organization but can act only upon the unanimous consent of all of them. The organization has associates and an objective to carry on business and divide the gains therefrom, which characterize both partnerships and corporations. While the organization has the corporate characteristic of centralized management, since substantially all of the interests in the organization are owned by the limited partners, it does not have the characteristics of continuity of life, free transferability of interests, or limited liability. The organization will be classified as a partnership for all purposes of the Internal Revenue Code.

Example (2). Three individuals form an organization which qualifies as a limited partnership under the laws of the State in which the organization was formed. The purpose of the organization is to acquire and operate various pieces of commercial and other investment property for profit. The certificate provides that the life of the organization is to be 10 years, unless a general partner dies, becomes insane, or retires during such period. On the occurrence of such death, insanity, or retirement, the remaining general partners may continue the business of the partnership for the balance of the 10-year period under a right so to do stated in the certificate. Each of the three individuals who is a general partner invests \$50,000 in the enterprise and has means to satisfy the business obligations of the organization to a substantial extent. Five million dollars of additional capital is raised through the sale of freely transferable interests in amounts of \$10,000 or less to limited partners. Nine hundred such interests are sold. The interests of the 900 limited partners are fully transferable, that is, a transferee acquires all the attributes of the transferor's interest in the organization. The general partners have exclusive control over management of the business, their interests are not transferable, and their liability for debts of the organization is not limited to their capital contributions. The organization has associates and an objective to carry on business and divide the gains therefrom. It does not have the corporate characteristics of limited liability and continuity of life. It has centralized management, however, since the three general partners exercise exclusive control over the management of the business, and since substantially all of the interests in the organization are

owned by the limited partners. While the interests of the general partners are not transferable, the transferability test of an association is met since substantially all of the interests in the organization are represented by transferable interests. The organization will be classified as a partnership for all purposes of the Internal Revenue Code.

(c) Partnership associations. The laws of a number of States provide for the formation of organizations commonly known as partnership associations. Such a partnership association will be treated as an association if, applying the principles set forth in § 301.7701-2, the organization more nearly resembles a corporation than the other types of business entities.

(d) Partner. The term "partner" means a member of a partnership. Added Nov. 3, 1967, 32 F.R. 15241.

§ 301.7701-4 Trusts

(a) Ordinary trusts. In general, the term "trust" as used in the Internal Revenue Code refers to an arrangement created either by a will or by an inter vivos declaration whereby trustees take title to property for the purpose of protecting or conserving it for the beneficiaries under the ordinary rules applied in chancery or probate courts. Usually the beneficiaries of such a trust do no more than accept the benefits thereof and are not the voluntary planners or creators of the trust arrangement. However, the beneficiaries of such a trust may be the persons who create it and it will be recognized as a trust under the Internal Revenue Code if it was created for the purpose of protecting or conserving the trust property for beneficiaries who stand in the same relation to the trust as they would if the trust had been created by others for them. Generally speaking, an arrangement will be treated as a trust under the Internal Revenue Code if it can be shown that the purpose of the arrangement is to vest in trustees responsibility for the protection and conservation of property for beneficiaries who cannot share in the discharge of this responsibility and, therefore, are not associates in a joint enterprise for the conduct of business for profit.

(b) Business trusts. There are other arrangements which are known as trusts because the legal title to property is conveyed to trustees for the benefit of

Internal Revenue Code references are identical with 26 U.S.C.A. (I.R.C.1954) sections

file
limited
liability

Continental

Other Proposals

1. obligation to public

270
1. limit size
2. limiting construction

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383
485 | 1,856,508
1455
4015
3880
1358
1455

3,800

185,000

60000

1. Income - Clinic Average per physician
2. Average premium
3. Who owns clinic - What percentage of physician clinic



D. Rodriguez

Vern GATES

S B

3 5 7

5/9/75

COMMITTEE REPORT

HOUSE

Mr. Speaker:

Date 5/13/75

The Committee on JUDICIARY has had SSSB 357

under consideration. A Majority of the members of the Committee

() recommends it DO PASS

() recommends it DO NOT PASS

() recommends it DO PASS WITH ATTACHED AMENDMENT(S)

(x) recommends it BE REPLACED WITH CS FOR SSSB 357 AND THAT

CS FOR SSSB 357 DO PASS

() "and" recommends it BE REFERRED TO THE _____

COMMITTEE

() reports it back WITHOUT RECOMMENDATION

() "other"

Members signing the Majority report:

[Handwritten signatures]

Members NOT concurring in the Majority report:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

[Handwritten signature] Chairman

A M E N D M E N T

OFFERED IN THE HOUSE:

By: House Judiciary

To: _____ HOUSE BILL No. _____

Judiciary CS SENATE BILL No. SS SB 357

PAGE: 3

LINE: 5

DELETE all of line 5 and
REPLACE with: canceling if accompanied by his parent, guardian, or
spouse who has attained the age of 19 years,
or by the parent or

May 16, 1975

The Honorable Jalmar Kerttula
Chairman
Senate Commerce Committee
Alaska State Legislature
State Capitol
Juneau, Alaska

Re: Committee Substitute for
House Bill No. 246 am.

Dear Senator Kerttula:

Committee Substitute for House Bill No. 246 am, an Act relating to liquor licenses, fees and municipal regulation of the sale of intoxicating liquor was introduced in the Senate on May 13, 1975 and was referred to the Senate Commerce and Finance Committees.

For the consideration of the Senate Commerce Committee, I am enclosing a memorandum from P. A. Wall, Director, Administrative Services Division which will disclose the additional wholesale license fee revenues to be obtained by that portion of the bill concerning new proposed fees to be paid by holders of general wholesale licenses and by holders of wholesale malt beverage and wine licenses.

With respect the revenue portion of the bill, consideration should be given to an effective date so as to avoid two rates of license fees for one calendar year.

If you or any members of the Senate Commerce Committee have any questions on the material submitted, please telephone the writer at 465-2397 and I will contact Mr. Wall (who served during part of 1974 as Acting Director of the Alcoholic Beverage Control Board, for further material or testimony.

Very truly yours,

R. D. Stevenson
Special Assistant

RDS:en

cc: The Honorable Bill Ray
Chairman, Senate Finance Committee

P. A. Wall, Director
Administrative Services

Linda E. Brown, Director
Alcoholic Beverage Control Board

MEMORANDUM

State of Alaska

TO: Phil A. Wall
Director
Administrative Services Division

DATE: May 14, 1975

FROM: R. D. Stevenson
Special Assistant
Department of Revenue

SUBJECT: CSHB 246 am

Attached is a copy of Committee Substitute for House Bill No. 246 amended, an Act relating to liquor licenses, fees and municipal regulation of the sale of intoxicating liquor.

The bill passed the House with an amendment to increase wholesale liquor license fees and now has been referred to the Senate Commerce and Finance Committees.

Please review the attached bill and prepare a memorandum to the writer advising of effect on Treasury.

Please comment on the lack of an effective date as it concerns the fee increases.

MEMORANDUM

State of Alaska

TO: R. D. Stevenson
Special Assistant
Department of Revenue

DATE: May 15, 1975

FROM: P. A. Wall
Director
Administrative Services Division
Department of Revenue

SUBJECT: CS for House Bill No. 246 am

CS for House Bill No. 246 am passed the House and has been referred to the Senate Commerce and Finance Committees.

The Committee Substitute relates to liquor licenses, fees, and municipal regulation of the sale of intoxicating liquor.

With relation to the amendment concerning liquor licenses and fees, this office has recently received the 1974 reports concerning the gross volume of business transacted by all wholesalers in Alaska for the calendar year 1974.

In order to up-date the statistics and provide the Legislature with a projection of increases in revenue that would be obtained by passage of the bill, the following information is submitted:

It is to be noted from AS Ch. 10.110 (a) concerning general wholesale licenses that the minimum license fee is \$500 and is in payment for the first \$50,000 of business transacted for one distributing point. Effective rate of the initial fee is 1% (\$50,000 X .01 equals \$500). The schedule then provides various brackets of gross receipts with increasing fees until the top amount of \$500,000 is reached where the present additional fee is \$5,000 or again an effective rate of 1% (\$500,000 X .01 equals \$5,000). There is presently no additional fee for receipts received in amounts over \$500,000 for one distributing point.

Reference is now made to the attached schedule, prepared from statistics contained in reports furnished yearly to the Alcoholic Beverage Control Board by holders of General Wholesale Licenses and by holders of Wholesale Malt Beverage and Wine Licenses.

It is to be noted on the subject schedule that for 1959 all holders of General Wholesale Licenses paid initial fees in total amount of \$7,000 and excess fees dependent upon the present schedule in total amount of \$59,500 for a grand total of fees in amount of \$66,500 to pay all fees due on gross receipts at various distributing points totaling \$15,490,169.50.

MEMORANDUM

State of Alaska

TO: Γ

DATE :

FROM:

SUBJECT:

Some 15 years later, in 1974, all holders of General Wholesale Licenses paid initial fees of \$7,500 and excess fees dependent upon the present schedule in total amount of \$66,000 for a grand total of fees in amount of \$73,500 to pay all fees due on gross receipts at various distributing points totaling \$40,439,525.74.

In comparison 15 years apart, the holders of General Wholesale Licenses were, under the prevailing fee schedule, able to increase their total volume of business from \$15,490,169.50 to \$40,439,525.74, an increase of \$24,949,356.24 or 161.07% increase, and yet pay in effect only \$7,000 more fees, an increase of 10.53% in total fees. This is due to the top fee schedule being set at \$5,000 for gross business of over \$500,000 at each distributing point.

The present fee schedule is described in 35-4-21 (II) ACLA 1949 amended by Chapter 131, SLA 1957 and Chapter 197, SLA 1959. There have been no further amendments or changes to date on the fee schedule so described.

From the present fee schedule, a wholesaler who had business transacted, for example, at some distributing point under the present fee schedule of \$4,000,000 would not pay more than the wholesaler who did total business at one distributing point of \$510,000. Each under the present fee schedule would pay the top additional fee of \$5,000.

During 1974 statistics available from the Alcoholic Beverage Control Board disclose that 13 holders of General Wholesale Licenses at various distributing points reported gross receipts in excess of \$500,000.

The present schedule for the General Wholesale License fees is in essence a fee of 1% of the total amount of business transactions each year at each distributing point up to a total of \$500,000. After that point no additional fees are incurred for gross receipts above \$500,000.

You will note from AS 04.10.110 (b) concerning Wholesale Malt Beverage and Wine Licenses that the minimum fee is \$100 and is in payment for the first \$10,000 of business transacted for one distributing point. Effective rate of the initial fee is 1% (\$10,000 X .01 equals \$100.00). The schedule then provides various brackets of gross receipts with increasing fees until the top amount of \$400,000 is reached where the present additional fee is \$5,000.

MEMORANDUM

State of Alaska

TO: F

DATE :

FROM:

SUBJECT:

With respect the seven holders during 1974 of Wholesale Malt Beverage and Wine Licenses, only one holder did in excess of \$200,000 in gross receipts at one distributing point; accordingly, the top bracket in the present schedule was not reached.

Based on the 1974 receipts of all wholesale licenses of firms doing business within the State, as reported to the Alcoholic Beverage Control Board, the provisions concerning the excess fee schedule that are incorporated in CS for House Bill No. 246 am would provide increased license fee revenues as follows:

GENERAL WHOLESALE:

15 initial fees @ \$500 (covering first \$50,000 of gross receipts)		\$ 7,500.00
Total Gross Receipts	\$40,439,525.74	
Less: Gross Receipts covered by initial fee (15 x \$50,000)	750,000.00	
Balance of gross receipts subject to 1% fee	<u>\$39,689,525.74</u>	<u>396,895.25</u>
Total proposed fees (based on 1974 sales)		\$401,395.25
Total fees under present schedule (based on 1974 sales)		<u>73,500.00</u>
Net increase in revenue on general wholesale licenses		<u>\$330,895.25</u>

WHOLESALE MALT BEVERAGE AND WINE LICENSES:

7 initial fees @ \$100 (covering first \$10,000 of gross receipts)		\$ 700.00
Total Gross Receipts	\$ 723,405.70	
Less: Gross Receipts covered by initial fee (7 @ \$10,000)	70,000.00	
Balance of gross receipts subject to 1% fee	<u>\$ 653,405.70</u>	<u>6,534.05</u>
Total proposed fees (based on 1974 sales)		\$ 7,234.05
Total fees under present schedule (based on 1974 sales)		<u>9,200.00</u>
Net decrease in revenue on wholesale malt beverage and wine licenses		<u>\$ 1,965.95</u>

MEMORANDUM

State of Alaska

TO: Γ

DATE :

FROM:

SUBJECT:

Summarizing the effect of the changes on both types of wholesale license fees is as follows:

Net increase in revenue on general wholesale license fees as compared to present fee schedules	\$330,895.25
Net decrease in revenue on wholesale malt beverage and wine license fees as compared to present fee schedules	<u>1,965.95</u>
Net additional revenue pursuant to CSHB 246 am	<u>\$328,929.30</u>

The new additional revenue based on 1974 sales would amount to \$328,929.30. For your information the 1975-76 budget request for the Alcoholic Beverage Control Board was in amount of \$275,200.

FIGURES FOR COMPARISON

Year	Wholesale Malt Gross	Excess Fee	License Fee	General Wholesale Gross	Excess Fee	License Fee
1959	\$ 960,001.48	\$10,700.00	\$1,600.00	\$15,490,169.50	\$55,500.00	\$7,000.00
1960	1,024,576.12	12,300.00	1,400.00	16,119,810.78	60,250.00	7,500.00
1961	764,479.56	8,700.00	1,200.00	15,650,947.52	57,250.00	7,000.00
1962	743,310.48	8,650.00	1,600.00	15,455,670.63	56,500.00	7,000.00
1963	601,747.82	7,400.00	1,000.00	16,162,541.62	57,250.00	7,500.00
1964	727,244.06	8,300.00	1,000.00	17,332,349.12	56,750.00	7,500.00
1965	703,760.25	7,300.00	1,000.00	15,914,811.61	57,750.00	6,000.00
1966	543,554.14	6,400.00	900.00	18,771,534.47	58,000.00	7,500.00
1967	663,528.38	7,550.00	1,100.00	21,616,597.71	60,250.00	7,500.00
1968	674,202.58	8,000.00	1,000.00	23,500,115.31	63,000.00	6,500.00
1969	796,918.54	9,750.00	900.00	26,658,756.88	63,500.00	6,500.00
1970	675,244.35	8,300.00	800.00	30,141,106.99	65,000.00	6,500.00
1971	649,422.17	8,050.00	800.00	30,730,205.25	65,000.00	6,500.00
1972	642,609.35	7,900.00	800.00	30,783,714.55	65,000.00	6,500.00
1973	688,507.19	8,300.00	700.00	32,919,173.60	65,000.00	7,500.00
1974	723,405.70	8,500.00	700.00	40,439,525.74	66,000.00	7,500.00

S B

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"An Act making corrective amendments in the Alaska Statutes as recommended by the revisor of statutes."

COMMITTEE REPORT

5/15/75

HOUSE

Mr. Speaker:

Date 5/21/75

The Committee on JUDICIARY has had SB 384 am

under consideration. A Majority of the members of the Committee

recommends it DO PASS

recommends it DO NOT PASS

recommends it DO PASS WITH ATTACHED AMENDMENT(S)

recommends it BE REPLACED WITH CS FOR SB 384 AND THAT

CS FOR SB 384 DO PASS

"and" recommends it BE REFERRED TO THE _____

COMMITTEE

reports it back WITHOUT RECOMMENDATION

"other"

Members signing the Majority report:

<u>[Signature]</u>	<u>[Signature]</u>	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Members NOT concurring in the Majority report:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

[Signature] Chairman

MEMORANDUM

LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

POUCH Y—STATE CAPITOL
JUNEAU, ALASKA 99811

TO: Legislative Council

DATE: April 16, 1975

FROM: Randolph Berry
Revisor of Statutes

SUBJECT: "An Act making
corrective amendments in the
Alaska Statutes as recommend
by the revisor of statutes."

This bill was prepared by the Revisor of Statutes under AS 01.05.-036. The proposed amendments are designed to accomplish the following purposes: (1) correction of citations; (2) correction or change in language due to court decisions; (3) cleanup to make provisions consistent with other law or to recognize more recently enacted law; and (4) miscellaneous clarification and correction.

It is suggested that this explanatory memorandum accompany the bill through its legislative course.

SECTIONAL ANALYSIS

Section 1 corrects the name of the American Physical Therapist Association.

Section 2 amends AS 08.84.030(3) to reflect the separation of the Professional Examination Service from the American Public Health Association.

Sections 3 and 4 correct citations which were inadvertently not changed when AS 08.84.030 was repealed and re-enacted, ch. 71 SLA 1974.

Section 5 repeals AS 09.55.140 (setting a one year residency requirement for divorce) which was declared in State v. Adams, 522 P. 2d 1125 (1974).

Section 6 corrects the terminology of an internal citation.

Section 7 deletes language which is inconsistent with the remaining age provisions of the section. There is actually no other provision which would limit the entitlement of a person 19 years old on the basis of age.

Section 8 changes the terminology of AS 14.12.010 to conform with current terminology found in Alaska municipal law (AS 29).

Section 9 corrects the language of AS 14.20.175(a) to reflect that the director of education for state operated schools rather than the commissioner of education sits on the panel described in that section.

Section 10 expands a citation to reflect additional sections subsequently added to ch. 47.

Section 11 changes the terminology of the paragraph to clarify the definition of "member of a political party."

Section 12 adds language to AS 16.05.820 to recognize that other agencies (i.e. the National Fisheries Service under the U. S. Department of Commerce) conduct research in the state.

Section 13 deletes a reference to AS 16.05.830 which was repealed by ch. 73 SLA 1968.

Section 14 amends AS 16.10.010(3) to transfer responsibility for particular duty. This transfer was apparently missed when the Department of Environmental Conservation was created.

Section 15 expands the citation to reflect section 55 subsequently added to Article 1 of AS 18.10 by ch. 55 SLA 1974.

Section 16 changes the terminology of the paragraph to conform to the standard style used in defining terms.

Section 17 changes the terminology of the provision to conform to the terminology used in the present applicable federal Act.

Section 18 deletes a reference to "writ of mandamus" as writs of mandamus are abolished by Rule 91(b) of the Rules of Civil Procedure.

Section 19 updates the language of the provision to conform to the amendment to AS 18.85.100(b) contained in sec. 1, ch. 16 SLA 1974.

Sections 19 - 25 change the references in those provisions to Office of Vocational Rehabilitation to the division of vocational rehabilitation in the Department of Education. This change was requested by the Department of Education to conform to the practice in the majority of other states.

Section 26 corrects an error that was contained in the amendment of that provision enacted by ch. 106 SLA 1971.

Sections 27 and 28 change the language of AS 29.33.050 and AS 29.41.010(a) in order to clarify meanings of those provisions.

Section 29 corrects citations contained in the section which were overlooked when that section was codified.

Legislative Council
April 16, 1975
Page Three

Section 30 would repeal AS 39.05.010 ("employment of persons not citizens prohibited"): It is considered that this is necessary to conform to the decision of the United States Supreme Court in Sugarman v. Dougal 413 U. S. 634 (1973).

Section 31 changes the language of AS 43.56.020 to clarify the exemptions and conform to the intent of the legislature as expressed in the Free Conference Committee report on FSS FCCSSCS CSHB1 (ch. 1 FSSLA 1973) which appears in the Senate Journal for November 11, 1973, p. 126.

Section 32 adds a definition of "municipality" to the definitions under AS 43.56.

Section 33 transfers the responsibility for the Village Safe Water Act from the Department of Health and Social Services to the Department of Environmental Conservation (see section 14 above).

Introduced: 4/21/75
Referred: Judiciary

1 IN THE SENATE

BY THE RULES COMMITTEE BY REQUEST
OF THE LEGISLATIVE COUNCIL

2 SENATE BILL NO. 384

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 NINTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act making corrective amendments in the Alaska
7 Statutes as recommended by the revisor of statutes."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 * Section 1. AS 08.84.010(a) is amended to read:

10 (a) There is created the state Physical Therapy Board, which
11 consists of five members appointed by the governor. The membership
12 consists of one physician licensed to practice medicine in the state,
13 three physical therapists registered in the state, and one lay person.
14 The members shall be selected from a list of 10 persons which shall be
15 submitted by the Alaska Chapter of the American Physical Therapy [THERA-
16 PIST] Association. Members of the board shall be appointed for terms
17 of one, two and three years, respectively; all subsequent appointments
18 shall be made for a term of three years and until their successors are
19 appointed. Vacancies on the board shall be filled by appointment in
20 like manner. Board members are not entitled to a travel or per diem
21 allowance.

22 * Sec. 2. AS 08.84.030(3) is amended to read:

23 (3) pass to the satisfaction of the board an examination from
24 the Professional Examination Service [PROFESSIONAL EXAMINATION SERVICE
25 OF THE AMERICAN PUBLIC HEALTH] Association, to determine his fitness for
26 practice as a physical therapist or physical therapy assistant, or be
27 entitled to registration without examination as provided in sec. 60 of
28 this chapter.

29 * Sec. 3. AS 08.84.065(a) is amended to read:

1 (a) The board may issue a nonrenewable temporary permit to an
2 applicant for registration by endorsement or by examination who meets
3 the requirements of sec. 30(1) and [,] (2) [AND (3)] of this chapter
4 and pays the required fee.

5 * Sec. 4. AS 08.84.100(b) is amended to read:

6 (b) A penalty of \$10 shall be charged in addition to all delin-
7 quent renewal fees for reinstatement of a registration which remains
8 lapsed for more than 60 days. If the registration remains lapsed for
9 more than three years, the board may require the applicant to take and
10 pass the examination given under sec. 30(3) [30(4)] of this chapter.

11 * Sec. 5. AS 09.55.140 is repealed.

12 * Sec. 6. AS 09.65.100(a)(5) is amended to read:

13 (5) the parent or guardian of the minor shall be relieved of
14 all financial obligation to the provider of the service under this sec-
15 tion [SEC. 100 OF THIS CHAPTER].

16 * Sec. 7. AS 13.16.065(c) is amended to read:

17 (c) A person entitled to letters under (a)(2) - (5) of this sec-
18 tion, and a person aged 19 and over [WHO WOULD BE ENTITLED TO LETTERS
19 BUT FOR HIS AGE], may nominate a qualified person to act as personal
20 representative. Any person aged 19 and over may renounce his right to
21 nominate or to an appointment by appropriate writing filed with the
22 court. When two or more persons share a priority, those of them who
23 do not renounce must concur in nominating another to act for them, or
24 in applying for appointment.

25 * Sec. 8. AS 14.12.010 is amended to read:

26 Sec. 14.12.010. DISTRICTS OF STATE PUBLIC SCHOOL SYSTEM. The
27 districts of the state public school system are as follows:

28 (1) each first [, SECOND, AND THIRD] class city in the
29 unorganized borough is a city school district;

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(2) each organized borough is a borough school district;

(3) the area outside organized boroughs and outside first
[, SECOND, AND THIRD] class cities is the state-operated school district.

* Sec. 9. AS 14.20.175(a) is amended to read:

(a) A teacher who has not acquired tenure rights is subject to nonretention for the school year following the expiration of his contract for any cause which the employer determines to be adequate. However, at his request, the teacher is entitled to a written statement of the cause for his nonretention. The board of directors for state schools, and the districts for district schools, shall provide by regulation or by law a procedure under which a nonretained teacher may, at his request, be heard informally by a panel consisting of the director of education for state-operated schools [COMMISSIONER] and two or more board members in the case of state schools, and by the local school board in the case of a district school.

* Sec. 10. AS 14.47.060 is amended to read:

Sec. 14.47.060. DEFINITIONS. In secs. 10 - 140 [50] of this chapter

(1) "diploma" means a degree, certificate, transcript, document, or other writing in any language representing that a person has completed a course of study beyond high school or is honored for achievement, and includes but is not limited to a diploma purporting to be a degree of bachelor, master, doctor, or fellow in any field of knowledge or endeavor. Graduation from high school or its equivalent need not be nor purport to be a prerequisite for undertaking or completing the course of study;

(2) "commission" means the Alaska Commission on Postsecondary Education.

* Sec. 11. AS 15.60.010(7) is amended to read:

(7) "member of a political party" means any person who

1 supports the political program of a party; filing as an independent
2 candidate shall not be interpreted as precluding the candidate from
3 being a member of a political party; and recognition of the independent
4 as a member of a political party at a party caucus held by members of the
5 legislature at the legislative session following his election, shall be
6 considered recognition of party membership at the time filings were
7 received by party candidates for the preceding general election;

8 * Sec. 12. AS 16.05.820 is amended to read:

9 Sec. 16.05.820. RESEARCH BY THE FEDERAL GOVERNMENT. The Secretary
10 of the Interior, the Secretary of Commerce or the Secretary of Agricul-
11 ture of the United States and their authorized agents or other appropri-
12 ate federal agencies may conduct fish cultural operations and scientific
13 investigations in the state in the manner and at the times jointly con-
14 sidered necessary or proper by the board and the secretary and their
15 authorized agents.

16 * Sec. 13. AS 16.05.900(a) is amended to read:

17 (a) A person who violates secs. [830,] 870 - 895 [,] or 920 of
18 this chapter or any [RULE OR] regulation promulgated under this chapter
19 is guilty of a misdemeanor and, upon conviction, is punishable by a
20 fine of not more than \$1,000 or by imprisonment for not more than six
21 months, or by both. A person who violates a [RULE OR] regulation
22 promulgated under this chapter for the regulation of commercial fish-
23 eries shall be punished as provided in sec. 720 of this chapter.

24 * Sec. 14. AS 16.10.010(3) is amended to read:

25 (3) render the waters inaccessible or uninhabitable for
26 salmon for that purpose without first applying for and obtaining a
27 permit or license from the Department of Environmental Conservation
28 [HEALTH AND SOCIAL SERVICES]. The application shall set out [FORTH]
29 the name and style of the person or concern, describe the waters and

1 location and state in particular the plans, purpose and intention for
2 which the application is made.

3 * Sec. 15. AS 16.10.030 is amended to read:

4 Sec. 16.10.030. VIOLATION OF SECS. 10 - 55 [50] OF THIS CHAPTER A
5 MISDEMEANOR. A person who violates secs. 10 - 55 [50] of this chapter is
6 guilty of a misdemeanor and, upon conviction, is punishable by a fine of
7 not less than \$100 nor more than \$500.

8 * Sec. 16. AS 17.20.370(12) is amended to read:

9 (12) "antiseptic" [THE REPRESENTATION OF A DRUG], in the [ITS]
10 labeling or advertisement of a drug, [AS AN ANTISEPTIC] is a representa-
11 tion that it is a germicide, except in the case of a drug purporting to
12 be, or represented as, an antiseptic for inhibitory use as a wet dress-
13 ing, ointment, dusting powder, or other use involving prolonged contact
14 with the body;

15 * Sec. 17. AS 18.05.031 is amended to read:

16 Sec. 18.05.031. PROGRAM PLANNING FOR DEVELOPMENTAL DISABILITY
17 [MENTALLY RETARDED]. (a) The department shall

18 (1) plan for and take other steps leading to comprehensive
19 state and community action to combat developmental disabilities [MENTAL
20 RETARDATION];

21 (2) be the sole agency for carrying out the purposes of the
22 federal act;

23 (3) make applications for, receive, and expend grants under
24 the federal act; the applications shall set out plans and contain
25 provisions and assurances for the expenditure of any grant as required
26 by the federal act or the secretary.

27 (b) As used in this section

28 (1) "federal act" means the Developmental Disabilities Ser-
29 vices and Facilities Construction Act (P.L. 91-517) [TITLE XVII OF THE

1 SOCIAL SECURITY ACT, GRANTS FOR PLANNING COMPREHENSIVE ACTION TO COMBAT
2 MENTAL RETARDATION (P.L. 88-156)];

3 (2) "secretary" means the Secretary of Health, Education, and
4 Welfare or his designee.

5 * Sec. 18. AS 18.55.210 is amended to read:

6 Sec. 18.55.210. RIGHT OF OBLIGEE OF AUTHORITY TO BRING [MANDAMUS
7 OR] INJUNCTION. An obligee of the authority may, in addition to all
8 other rights which may be conferred and subject only to contractual
9 restriction binding upon him, bring an [A MANDAMUS OR] injunction action
10 against the members, the authority, its officers, agents or employees.

11 * Sec. 19. AS 18.85.120(a) and (b) are amended to read:

12 (a) The determination of a person's indigency shall be made [BY
13 THE AGENCY OR] by the court in which an action against him is pending.
14 [WHEN IT IS MADE BY THE AGENCY IT IS SUBJECT TO REVIEW BY THE COURT.]

15 (b) In determining whether a person is indigent and in determining
16 the extent of his inability to pay, [THE AGENCY OR] the court shall con-
17 sider such factors as income, property owned, outstanding obligations,
18 and the number and ages of his dependents. Release on bail does not
19 preclude a finding that a person is indigent. In each case, the person,
20 subject to the penalties for perjury, shall certify under oath, and in
21 writing or by other record, material factors relative to his ability to
22 pay which the court prescribes.

23 * Sec. 20. AS 23.15.040 is amended to read:

24 Sec. 23.15.040. DIVISION [OFFICE] OF VOCATIONAL REHABILITATION
25 ESTABLISHED. The division [OFFICE] of vocational rehabilitation is
26 established under the Board of Vocational Rehabilitation to carry out
27 secs. 10 - 210 of this chapter.

28 * Sec. 21. AS 23.15.050 is amended to read:

29 Sec. 23.15.050. DIRECTOR OF VOCATIONAL REHABILITATION. The board

1 shall appoint a director of the division [OFFICE] of vocational rehabili-
2 tation. The director has the administrative authority delegated to him
3 by the board and necessary to carry out secs. 10 - 210 of this chapter
4 and the regulations and policies adopted by the board.

5 * Sec. 22. AS 23.15.060 is amended to read:

6 Sec. 23.15.060. AGREEMENTS UNDER SOCIAL SECURITY ACT. (a) The
7 board acting through the division [OFFICE] of vocational rehabilitation
8 may enter into necessary agreements on behalf of the state with the
9 Secretary of Health, Education and Welfare to carry out the provisions
10 of the federal Social Security Act, as amended, and as it is subsequently
11 amended, relating to the making of determinations of disability under
12 Title II of that Act.

13 (b) The Department of Revenue shall act as the custodian of funds
14 paid by the federal government to the state, shall comply with agree-
15 ments entered into under the Social Security Act, and shall disburse the
16 funds in accordance with instructions from the director of the division
17 [OFFICE] of vocational rehabilitation.

18 * Sec. 23. AS 23.15.070 is amended to read:

19 Sec. 23.15.070. PERSONNEL POLICIES. The board shall adopt person-
20 nel policies for the division [OFFICE] of vocational rehabilitation.
21 The director shall execute these policies and keep them on file in his
22 office.

23 * Sec. 24. AS 23.15.110 is amended to read:

24 Sec. 23.15.110. EXTENSION OF SERVICES OUTSIDE STATE. Vocational
25 rehabilitation service may be extended to the continental United States
26 to all individuals eligible under secs. 10 - 210 of this chapter. The
27 director of the division [OFFICE] of vocational rehabilitation may place
28 professional or clerical personnel or both inside the continental United
29 States to carry out the purposes of secs. 10 - 210 of this chapter.

1 * Sec. 25. AS 23.15.210(1) and (3) are amended to read:

2 (1) "agency" means the division [OFFICE] of vocational
3 rehabilitation;

4 (3) "director" means the director of the division [OFFICE]
5 of vocational rehabilitation;

6 * Sec. 26. AS 23.20.520(12) is amended to read:

7 (12) "employing unit" means an individual or type of organiza-
8 tion, partnership, association, trust, estate, joint trust company,
9 insurance company or domestic or foreign corporation, or the receiver,
10 referee in bankruptcy, trustee, or successor of one of these, or the
11 legal representative of a deceased person, which has or subsequent to
12 January 1, 1937, had one or more individuals performing service for it
13 within the state; an [AND] individual performing services inside the
14 state for an employing unit which maintains two or more separate estab-
15 lishments inside the state is considered as employed by a single employ-
16 ing unit for the purposes of this chapter; notwithstanding any provision
17 in this chapter, any employing unit which employs individuals whose
18 services must be covered by the unemployment insurance laws of this
19 state after December 31, 1971 as a condition of approval of the unemploy-
20 ment insurance laws of this state under sec. 3304(a) of the U.S. Internal
21 Revenue Code of 1954, as amended, will be considered an employer as to
22 those individuals and is subject to contributions on all wages paid after
23 December 31, 1971, or reimbursement payments to cover benefits paid
24 based on services performed after December 31, 1971, depending on the
25 applicable law;

26 * Sec. 27. AS 29.33.050 is amended to read:

27 Sec. 29.33.050. EDUCATION. Each borough constitutes a borough
28 school district and establishes, maintains, and operates a system of
29 public schools on an areawide basis as provided in AS 14.14.060. A

1 military reservation within an organized borough is not part of the
2 borough school district until the military mission is terminated and
3 [OR UNTIL] inclusion in the borough school district is approved by the
4 Department of Education. However, operation of the military reservation
5 schools by the borough school district may be required by the Department
6 of Education under AS 14.14.110, with the consent of the borough school
7 district board. If the military mission of a military reservation ter-
8 minates and continued management and control by the state-operated
9 schools is disapproved by the Department of Education, operation, manage-
10 ment and control of schools on military reservations transfers to the
11 borough school district in which the military reservation is located.

12 * Sec. 28. AS 29.41.010(a) is amended to read:

13 (a) A third class borough shall exercise the areawide powers of
14 education and tax assessment and collection in the manner provided for
15 second class boroughs. Provisions of law relative to first and second
16 class organized boroughs apply with respect to third class boroughs only
17 to the extent they are consistent with this chapter. A military reser-
18 vation within an organized borough is not part of the borough school
19 district until the military mission is terminated and [OR UNTIL] inclu-
20 sion in the borough school district is approved by the Department of
21 Education. However, operation of the military reservation schools by
22 the borough school district may be required by the Department of Educa-
23 tion under AS 14.14.110, with the consent of the borough school district
24 board. If the military mission of a military reservation terminates and
25 continued management and control by the state-operated schools is dis-
26 approved by the Department of Education, operation, management and con-
27 trol of schools on military reservations transfers to the borough school
28 district in which the military reservation is located.

29 * Sec. 29. AS 34.07.010(a) is amended to read:

1 (a) This chapter is applicable only to property, the sole owner
2 or all of the owners of which submit it to the horizontal property
3 regime by executing and recording a declaration under (c) of this section
4 and sec. 20 [SEGS. 150 - 160] of this chapter.

5 * Sec. 30. AS 39.05.010 is repealed. *1/2*

6 * Sec. 31. AS 43.56.020 is amended to read:

7 Sec. 43.56.020. EXEMPTIONS. (a) The following are exempt from
8 local taxes levied or authorized under sec. 10(b) of this chapter:

9 (1) property rights attached to or inherent in the right to
10 explore for or produce oil or gas;

11 (2) oil or gas leases or properties, whether producing or
12 not;

13 (3) oil or gas in place;

14 (4) oil or gas produced or extracted in the state;

15 (5) the value of intangible drilling expenses and exploration
16 expenses;

17 (6) an interest in property described in AS 43.55.010(b) [;

18 (7) BEFORE THE CONSTRUCTION COMMENCEMENT DATE, PROPERTY TAXED
19 UNDER SEC. 10(a) OF THIS CHAPTER WHICH IS COMMITTED BY CONTRACT OR OTHER
20 AGREEMENT FOR USE IN THIS STATE PRIMARILY FOR PIPELINE TRANSPORTATION
21 OF GAS OR UNREFINED OIL OR FOR THE PRODUCTION OF GAS OR UNREFINED OIL
22 TO BE TRANSPORTED BY THAT PIPELINE;

23 (8) BEFORE THE CONSTRUCTION COMMENCEMENT DATE, PROPERTY
24 TAXED UNDER SEC. 10(a) OF THIS CHAPTER WHICH IS COMMITTED BY CONTRACT
25 OR OTHER AGREEMENT FOR USE IN THIS STATE PRIMARILY IN THE OPERATION OR
26 MAINTENANCE OF FACILITIES FOR PIPELINE TRANSPORTATION OF GAS OR UNREFINED
27 OIL, OR FACILITIES FOR PRODUCTION OF GAS OR UNREFINED OIL TO BE TRANS-
28 PORTED BY THAT PIPELINE].

29 (b) There is exempt from state taxes levied or authorized under

1 sec. 10(a) of this chapter, before the construction commencement date,
2 property which is committed by contract or other agreement for use in
3 this state primarily for the production or pipeline transportation of
4 gas or unrefined oil, or in the operation or maintenance of facilities
5 for the production or pipeline transportation of gas or unrefined oil.

6 (c) In (a)(2) of this section, "properties" means mineral inter-
7 ests in oil and gas and working interests, royalty interests, and over-
8 riding royalty interests in oil and gas leases.

9 * Sec. 32. AS 43.56.210 is amended by adding a new paragraph to read:

10 (8) "municipality" means a home rule or general law city
11 or borough and includes but is not limited to a unified municipality
12 organized under AS 29.68.

13 * Sec. 33. AS 46.07.080(1) is amended to read:

14 (1) "commissioner" means the commissioner of environmental
15 conservation [HEALTH AND SOCIAL SERVICES];

House Judiciary Committee

May 22, 1975

The meeting was called to order at 1:35 by Chairman Gardiner. All members were present except Mr. Speeking.

HR 3 Department of Justice

line 26 after made: add by the governor

This bill was moved out of committee as amended.

SB 182 Arrest without warrant

Jim Hanley of the AG's office testified that the bill was needed so that police could make an arrest and draw blood for OMVI testing.

line 16: add if the violation is alleged to have occurred less than eight hours before the time of such arrest. This amendment passed.

Mr. Brown moved the Judiciary CS out of committee.

SB 411 Doctors guide

Joe Hill, of the AG's office testified that this bill was needed so that the group in Anchorage wanting to compile the guide could receive federal monies. Either the statute had to be changed or the AG would have to issue an opinion that such a guide was legal under the present statute. The AG has determined that since it is the doctors who furnish the information to be contained in the guide, and since this information could cause competition, that it was advertising of a sort and therefore illegal under the present statute.

The bill was moved out of committee.

SJR 37 Outboard motor numbering

This bill was moved out of committee.

SB 384 am Revise Statutes

Randy Berry, the Revisor of Statutes explained the Section 28 as follows: The Free Conference Committee report and the statute language appear to be in conflict. The Department of Revenue has not been enforcing the statute and has been, in effect, following the report. This section makes the language in the statute consistent with the intent.

The committee reinserted the old section 30 which had been deleted by the senate as a new section 31.

Mr. Berry requested that the Senate delete the old sections 27 and 28 relating to military schools.

The committee agreed to delete section 7 and renumber.

143

House Judiciary Committee
May 26, 1975

The meeting was called to order at 2:15 p.m. by Chairman Cardiner. All members were present.

CS SB 257 am Municipal Fire Departments

Douglas Body, Coordinating Fire Chief, testified that there is no statutory authority for the fire departments to do some of the things they are presently doing.

The following amendments passed:

page 1, line 18, page 1, line 23: after city insert: organized village.

page 2, line 7: after trespass insert: upon property at or near the scene of a fire.

page 2, line 7: delete without liability

page 2, line 21: delete without liability

page 2, line 17: insert before inspect: upon 24 hour notice to the owner or occupant,

page 2, line 24: delete all of subsection (9) and renumber

page 3, line 2: insert after misdemeanor: , and upon conviction, is punishable by imprisonment for one year, or by a fine of not more than \$1,000, or by both.

page 2, line 3: delete all of Section 3

page 3, line 6: insert definition section "preplanning" to be drafted.

The Judiciary CS for CS SB 257 am was passed out of committee.

SB 384 Revise statutes

page 6, line 9: delete bring and insert seek, delete action and insert or an action in the nature of an action for mandamus.

The Judiciary CS for SB 384 was passed out of committee.

SB 138 Zoning State Parks

The C and RA CS for SB 138 was passed out of committee.

SB

406

"An Act relating to oil terminal facilities and the marine transportation of crude oil, refined petroleum products or their by-products; effective date."

COMMITTEE REPORT

5/18/76

HOUSE

Mr. Speaker:

Date

May 22, 1976

The Committee on JUDICIARY has had CS SS SB 406

under consideration. A Majority of the members of the Committee

() recommends it DO PASS

() recommends it DO NOT PASS

() recommends it DO PASS WITH ATTACHED AMENDMENT(S)

recommends it BE REPLACED WITH CS FOR _____ AND THAT

CS FOR _____ DO PASS

() "and" recommends it BE REFERRED TO THE _____

COMMITTEE

() reports it back WITHOUT RECOMMENDATION

() "other"

Members signing the Majority report:

<u>[Signature]</u>	<u>Do Pass</u>	<u>[Signature]</u>
<u>[Signature]</u>	<u>" "</u>	<u>[Signature]</u>
<u>[Signature]</u>	<u>" "</u>	<u>[Signature]</u>
<u>[Signature]</u>	<u>" "</u>	<u>[Signature]</u>

Members NOT concurring in the Majority report:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

Terry Anderson Chairman

Put in my file on SB406

~~see J.S. at 11/17~~
~~8/27/76~~

May 14, 1976

Memo to: ~~Guy Van Doren~~

From: Norman Gorsuch

Re: HCS CSSSSB 406

Page 20, Line ~~18~~ 17

Strike lines ~~19~~ through ~~20~~ and replace with the following language:

- (ii) partial, complete or defensively placed segregated ballast systems;
- (iii) a double bottom of a minimum height of one-fifteenth of the beam or two meters, whichever is the greater, or a double hull throughout the cargo-carrying length or compartments of the tank vessel of a minimum of two meters;

Purpose:

- (1) sets forth clear statutory criteria that can be used by DEC in setting risk certificate premiums - avoids arbitrary rate setting
- (2) recognizes that segregated ballast systems on tankers are safer than single hull vessels - arguably, double hulls would be even safer. Allows some recognition in premium rates of difference between rate for single hull vs. segregated ballast tankers.

Separates page 20, line 18
(ii) into 2 parts

Keep fund at \$20 million

Each year the waters of the Earth are subjected to a massive input of petroleum and its products. In the years 1969-70, 4.9 million metric tons of oil were dumped into the oceans.

Although 46.3 per cent of the above stated figure originated from vessels, there are many sources for pollution. Alaskans were made dramatically aware of the possibilities on May sixth of this year when workmen attempting to move the George Ferris drilling rig in Kachemak Bay discovered its legs were buckling. By the morning of the May tenth, an oil slick was evident extending two to three miles south from the rig through one of the world's largest shrimp and crab regions. At the same time some six million salmon fry were known to be moving through the polluted area.

Tankers and other vessels do contribute their share of oil to the oceans. At about the same time that crews were attempting to stop the leakage from the George Ferris, a tanker went aground in Spanish waters dumping some 80,000 tons of oil into the ocean.

Alaska has already been subjected to the consequences of a tanker accident. For instance, on March 7, 1973 the SS Hillyer Brown ran aground at Cold Bay resulting in what the Coast Guard report described as "...a major polluting incident." But Alaska has not yet become acquainted with vessels of the breathtaking dimensions which will soon be plying northern waters removing oil from Valdez.

Some of the vessels scheduled for service in Alaska are capable of carrying up to 160,000 tons oil. They are just under a quarter of a mile long and 200 feet wide. An emergency stop requires three miles and 20 minutes.

As a contrast to these massive vessels, the environment of Prince William Sound and other Alaskan waters in their paths is among the most delicate in the world. Prince William Sound is known to produce winds of more than 60 mph velocity for periods of up to two weeks. At the same time, the three fisheries in the route of the tankers produce from six to 15 per cent of the state's fishery harvest.

Cleaning up after a spill is, according to industry testimony, an ineffective science and is extremely expensive. Even in the relatively small incident on the George Ferris the spreading oil proved a match for technology when the oil slipped through the containment boom which had been placed around the rig.

CS SS SB 406 is intended to make the danger of pollution from a tanker or terminal facility as minimal as possible while providing the resources to restore the environment in the event of a spill. It establishes as mandatory for all vessels:

- 1) Loran-C navigational equipment;
- 2) collision avoidance systems;
- 3) back up radar systems.

Vessels over 40,000 DWT are required to have tug escorts if they lack:

- 1) lateral thrusters;
- 2) controllable pitch propellers or astern horsepower equal to 40 per cent of rated horsepower;
- 3) redundant boilers.

The bill establishes an insurance certification program with premiums based on the aforementioned safety features as well as flue gas inerting systems and segregated ballast tanks including double bottoms.

Operators of vessels and terminal facilities are required to pay annual premiums into the program with the funds to be made available to cover the cost of cleaning up any oil spills.

The Department of Environmental Conservation is authorized to enforce the provisions of this bill and administer the fund. It is also directed to establish uniform vessel traffic regulations in cooperation and compliance with Coast Guard standards.

Because of the concern over the effect of the bill on rural Alaska, certain exemptions have been allowed. Exempt are marinas with storage capabilities of 10,000 barrels or less and on shore facilities with storage capabilities of 25,000 barrels or less. In addition, on shore facilities with storage capabilities of up to 200,000 barrels are required to carry third party liability insurance of only \$100,000.

Keep this in foot file

Original Sponsors: Croft, Kerttula,
and Poland

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2 HOUSE CS FOR CS FOR SPONSOR SUBSTITUTE FOR SENATE BILL NO. 406 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 NINTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to oil terminal facilities and the
7 marine transportation of crude oil, refined petroleum
8 products or their by-products; and providing for an
9 effective date."

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

11 * Section 1. AS 30 is amended by adding a new chapter to read:

12 CHAPTER 20. REGULATION OF TANK VESSEL TRAFFIC.

13 Sec. 30.20.010. POLICY AND PURPOSE. (a) Because of the danger of
14 spills, the legislature finds and declares that the marine transporta-
15 tion of crude oil, refined petroleum products or their by-products by
16 tankers or other carriers so engaged in the coastal waters and inside
17 coastal waters of the state creates a great potential hazard to impor-
18 tant natural resources of the state and to jobs and incomes dependent on
19 these resources. The legislature also recognizes that the state's
20 coastal and inside coastal waters are a relatively confined saltwater
21 environment with irregular shorelines and therefore there is a greater
22 than usual likelihood of long-term damage from a large oil discharge.
23 Certain areas of the state's coastal and inside coastal waters have
24 limited space for maneuvering large tank vessels engaged in the marine
25 transportation of crude oil, refined petroleum products or their by-
26 products. These waters also contain many natural obstacles and pheno-
27 mena and at certain times and places a high density of commercial,
28 fishing and pleasure boat traffic. Thus, it is important that large
29 tank vessels have sufficient capability for rapid maneuvering responses.

1 (b) It is also the purpose of this chapter to decrease the likeli-
2 hood of oil discharges in the coastal and inside coastal waters of the
3 state and its shorelines by requiring tank vessels engaged in the marine
4 transportation of crude oil, refined petroleum products or their by-
5 products to be equipped with certain safety and maneuvering capability
6 features and, if these vessels are above a certain size but lack these
7 features, to be escorted by tugs while navigating in the coastal and
8 inside coastal waters of the state.

9 (c) The legislature further finds and declares that the particular
10 marine environment of the state through which tank vessels engaged in
11 the marine transportation of crude oil, refined petroleum products or
12 their by-products will navigate is potentially more hazardous than other
13 maritime routes. The introduction of crude oil, refined petroleum pro-
14 ducts or their by-products into the marine environment of the state's
15 coastal and inside coastal waterways causes extreme damage to the
16 marine, estuarine and adjacent terrestrial environment lasting beyond
17 the visible existence of the spilled, discharged or escaped oil and is
18 potentially destructive of the valuable species of fish and shellfish
19 that are harvested in Alaskan waters.

20 Sec. 30.20.020. STANDARD SAFETY, MANEUVERABILITY FEATURES. (a) A
21 tank vessel engaged in the marine transportation of crude oil, refined
22 petroleum products or their by-products while navigating those portions
23 of the navigable coastal, inside coastal or other navigable waters of
24 the state prescribed by the department by regulation shall be equipped
25 or fitted with

26 (1) LORAN-C navigational system receivers and other position
27 location systems as may be prescribed from time to time by the depart-
28 ment by regulation;

29 (2) electronically controlled collision avoidance systems

1 where applicable to an appropriate vessel prescribed by the department
2 by regulation; and

3 (3) two radars of types prescribed by the department by regu-
4 lation in working order, one of which is operating.

5 (b) A tank vessel engaged in the marine transportation of crude
6 oil, refined petroleum products or their by-products of 40,000 dead-
7 weight tons or more, which lacks the following maneuverability and
8 stopping features, must be escorted by tugs with an aggregate shaft
9 horsepower equivalent to five per cent of the deadweight tons of that
10 tank vessel while navigating those portions of the navigable coastal,
11 inside coastal or other navigable waters of the state prescribed by the
12 department by regulation:

13 (1) lateral thrusters;

14 (2) controllable pitch propellers or astern horsepower equal
15 to 40 per cent of rated horsepower; and

16 (3) redundant boilers, an auxiliary propulsion source or
17 other backup equipment that the department may require by regulation to
18 provide for a vessel's safe operation if the primary equipment fails.

19 (c) However, the department may by regulation ~~exempt a tank vessel~~
20 from the tug escort provisions of (b) of this section in certain ports,
21 harbors or navigable waters of the state or at certain times of the ^{year}
22 year, ^{if} as in the judgment of the department, ^{the safety of the tank vessels will} are ^{dictated by} meteorolo-
23 gical or oceanographic ^{not be produced by the lack of a tug escort.} conditions ^{are such that the tug escort would be ineffective}

24 Sec. 30.20.030. TANK VESSEL TRAFFIC REGULATIONS. (a) The depart-
25 ment shall adopt and maintain a comprehensive, uniform system of traffic
26 regulations for the operation of tank vessels engaged in the transporta-
27 tion of crude oil, refined petroleum products or their by-products in
28 the navigable waters of the state that may be required to implement the
29 provisions of this chapter and that are not in conflict with traffic

1 regulations contained in federal navigation laws or regulations promul-
2 gated by the United States Coast Guard.

3 (b) In adopting these regulations, the department may prescribe
4 the maximum and minimum speed for vessels subject to this chapter and
5 the weather conditions under which the movement of these vessels may be
6 prohibited.

7 (c) The department shall consult and cooperate with the United
8 States Coast Guard in the establishment, adoption, maintenance, adminis-
9 tration and enforcement of the traffic regulations adopted under this
10 chapter.

11 (d) The Administrative Procedure Act (AS 44.62) applies to
12 regulations adopted by the department under this chapter.

13 Sec. 30.20.040. ENFORCEMENT; PENALTIES. (a) This chapter and the
14 regulations adopted under it shall be enforced by a peace officer or an
15 employee of the department or other state agency authorized by the com-
16 missioner.

17 (b) An owner or operator of a tank vessel who violates a provision
18 of this chapter, or a regulation adopted under it, upon conviction is
19 guilty of a misdemeanor and is punishable by a fine of not less than
20 \$1,000 nor more than \$25,000, or by imprisonment for not more than one
21 year, or by both. Each day on which a violation occurs may be con-
22 sidered a separate and additional offense.

23 Sec. 30.20.050. INTERSTATE, FOREIGN COMPACTS, OTHER AGREEMENTS,
24 ARRANGEMENTS AUTHORIZED. Subject to the approval of the legislature or
25 of the Congress of the United States, as may be required under appli-
26 cable provisions of law, the governor may execute supplementary agree-
27 ments, reciprocal arrangements or compacts with any other state or with
28 a foreign government to implement the purposes of this chapter.

29 Sec. 30.20.060. DEFINITIONS. In this chapter

1 (1) "carrier" means a person who owns or who, for compensa-
2 tion, operates or otherwise provides a tank vessel engaged in, used or
3 capable of being used for, the marine transportation of crude oil,
4 refined petroleum products or their by-products on the waters of this
5 state;

6 (2) "commissioner" means the commissioner of environmental
7 conservation;

8 (3) "deadweight tons" or "DWT" means the difference in metric
9 tons between the lightweight displacement and the total displacement of
10 a vessel measured in water of specific gravity 1.025 at the load water-
11 line corresponding to the assigned summer freeboard;

12 (4) "department" means the Department of Environmental Con-
13 servation;

14 (5) "crude oil, refined petroleum products or their by-
15 products" means oil of any kind and in any form including, but not
16 limited to, petroleum, fuel oil, gasoline, lubricating oils, oily
17 sludge, oil refuse, oil mixed with other wastes, crude oils, liquified
18 natural gas, propane, butane or other liquid hydrocarbons regardless of
19 specific gravity;

20 (6) "operate" means to navigate or otherwise use a vessel
21 subject to the provisions of this chapter;

22 (7) "operator" means the person who operates or has charge of
23 the navigation or use of a vessel subject to the provisions of this
24 chapter;

25 (8) "owner" means a person, other than a lienholder, having
26 the property in or title to a vessel; the term includes a person en-
27 titled to the use or possession of a vessel subject to an interest of
28 another person reserved or created by agreement and securing payment or
29 performance of an obligation, but the term excludes a lessee under a

1 lease not intended as security;

2 (9) "tank vessel" means a self-propelled vessel that is
3 specially constructed or converted to carry liquid bulk cargo in tanks
4 and includes tankers, tankships and combination carriers when carrying
5 crude oil, petroleum products or their by-products in bulk; it does not
6 include vessels carrying crude oil, petroleum products or their by-
7 products in drums, barrels, or other packages, or vessels carrying crude
8 oil, petroleum products or their by-products as fuel or stores for that
9 vessel;

10 (10) "waters of the state" means the navigable coastal, inside
11 coastal and other navigable waters within the territorial limits of this
12 state, and the marginal sea adjacent to this state, as defined in
13 AS 44.03 and AS 46.03.900(22).

14 Sec. 30.20.070. SHORT TITLE. This chapter may be cited as the
15 Tank Vessel Traffic Regulation Act.

16 * Sec. 2. AS 30 is amended by adding a new chapter to read:

17 CHAPTER 25. OIL TERMINAL FACILITIES: TRANSFER
18 OF CRUDE OIL, REFINED PETROLEUM PRODUCTS OR THEIR BY-PRODUCTS.

19 Sec. 30.25.010. DECLARATION OF POLICY AND PURPOSE. (a) The
20 legislature finds and declares that it is a matter of the highest
21 urgency and priority to protect the coastal and inside coastal waters,
22 estuaries, wetlands, beaches and public lands adjoining the seacoast,
23 taking into account multiple use accommodations necessary to provide the
24 broadest possible protection of public and private interests with the
25 least possible conflicts among these diverse uses.

26 (b) The legislature further finds and declares that the transfer
27 of crude oil, petroleum products or their by-products between vessels,
28 and between vessels and onshore or offshore facilities within the juris-
29 diction of the state is a hazardous undertaking. Spills, discharges and

1 escapes of crude oil, refined petroleum or their by-products that may
2 occur as a result of procedures involved in the transfer and storage of
3 these products pose threats of great danger and damage to the marine,
4 estuarine and adjacent terrestrial environment of the state, to owners
5 and users of shorefront property, to public and private recreation, to
6 residents of the state and other interests deriving livelihood from
7 fishing and other marine-related activities, and to the beauty of the
8 state's coastline. These spills have occurred frequently and present
9 future threats of potentially catastrophic proportions, all of which are
10 expressly declared to be inimical to the paramount interests of the
11 state as set out in this section. These state interests outweigh any
12 economic and liability burdens imposed by the legislature upon those
13 engaged in transferring crude oil, refined petroleum products or their
14 by-products and related activities.

15 (c) The legislature intends by the enactment of this legislation
16 to

17 (1) exercise the police power of the state through the
18 Department of Environmental Conservation by conferring upon the depart-
19 ment the authority to deal with the hazards and threats of danger and
20 damage posed by these transfers and related activities and to encourage
21 and ensure cooperation with the United States Coast Guard and any other
22 state or federal department or agency;

23 (2) require, through the maximum practicable utilization of
24 contractual services, the prompt containment and removal of the pollu-
25 tion occasioned by oil spills;

26 (3) provide procedures whereby persons suffering damage from
27 these occurrences may be made whole promptly;

28 (4) establish a fund to provide for the inspection and super-
29 vision of oil transfer activities and guarantee the prompt cleanup of

1 oil spills and the payment of those costs; and

2 (5) to establish a system of regulation by requiring the
3 possession of a certificate of risk avoidance, the payment of risk
4 charges and the proof of financial responsibility by owners or operators
5 of oil terminal facilities and tank vessels engaged in the transporta-
6 tion or transfer of crude oil, refined petroleum products or their by-
7 products; the risk avoidance scheme is designed to provide incentives to
8 owners or operators of tank vessels engaged in the marine transportation
9 of crude oil, refined petroleum products or their by-products to incor-
10 porate safety and maneuvering capability features in those tank vessels
11 to reduce the risk that these vessels will release crude oil, refined
12 petroleum products or their by-products into the marine environment by
13 granting a reduction in the risk established under sec. 250 of this
14 chapter and by reducing requirements for proof of financial responsi-
15 bility under sec. 50 of this chapter.

16 (d) The legislature further finds and declares that the preserva-
17 tion of the public uses referred to in this section is of grave public
18 interest and concern to the state in promoting its general welfare,
19 promoting health and providing for the public safety, and that the
20 state's interest in the preservation of these interests outweighs any
21 burdens of strict liability imposed by the legislature upon those en-
22 gaged in transferring crude oil, refined petroleum products or their by-
23 products and related activities.

24 ARTICLE 2. REGULATION OF OIL TERMINAL FACILITIES, MARINE
25 CARRIERS; ISSUANCE OF CERTIFICATES OF RISK AVOIDANCE.

26 Sec. 30.25.020. POLLUTION AND CORRUPTION OF WATERS AND LANDS OF
27 THE STATE PROHIBITED. Except as provided in AS 46.03.740, the discharge
28 of crude oil, refined petroleum products or their by-products into or
29 upon any waters and lands of the state, as defined in AS 46.03.826(7),

1 is prohibited.

2 Sec. 30.25.030. AUTHORITY OF DEPARTMENT. (a) The authority of
3 the department under this chapter extends to the areas described in
4 sec. 20 of this chapter, and in AS 44.03.

5 (b) Certificates of risk avoidance required under this chapter
6 shall be obtained from and proof of financial responsibility shall be
7 submitted to the department subject to the terms and conditions pre-
8 scribed in this chapter and regulations adopted under it.

9 Sec. 30.25.040. OPERATION WITHOUT A CERTIFICATE PROHIBITED; APPLI-
10 CATION; PERIODIC INSPECTION. (a) No person may operate, or cause to be
11 operated in the state, an oil terminal facility used or capable of being
12 used in the transfer of crude oil, refined petroleum products or their
13 by-products without proof of financial responsibility submitted to, and
14 a certificate of risk avoidance issued by, the department under this
15 chapter.

16 (b) No person may operate, or cause to be operated, a tank vessel
17 engaged in the marine transportation of crude oil, refined petroleum
18 products or their by-products without proof of financial responsibility
19 submitted to, and a certificate of risk avoidance issued by, the depart-
20 ment under this chapter

21 (1) to or from oil terminal facilities located onshore in the
22 ports, harbors or elsewhere in the state;

23 (2) to or from deepwater port facilities located offshore in
24 the waters of the state; or

25 (3) through the waters of the state.

26 (c) The department shall prohibit the loading or unloading of a
27 tank vessel subject to the provisions of this chapter, that does not
28 possess a certificate of risk avoidance or proof of financial responsi-
29 bility, or both the certificate and proof.

1 (d) Certificates of risk avoidance shall be issued on an annual
2 basis subject to those terms and conditions the department considers
3 necessary and prescribes by regulation to carry out the purposes of this
4 chapter.

5 (e) As a condition precedent to the issuance or renewal of a
6 certificate of risk avoidance the department shall require payment of an
7 annual risk charge established under sec. 250 of this chapter and sub-
8 mission of satisfactory evidence that the applicant has, or is in the
9 process of implementing state and federal plans and regulations for
10 control of pollution related to crude oil, refined petroleum products or
11 their by-products and the abatement of the pollution when a discharge
12 occurs.

13 (f) In addition to the evidence supplied under this section,
14 applicants for an oil terminal facility certificate shall demonstrate
15 that they can provide all necessary equipment, personnel and supplies to
16 prevent, contain, and remove discharges of oil and other pollutants, and
17 shall submit information to the department in a form satisfactory to it,
18 describing the following:

19 (1) the barrel or other measurement capacity of the terminal
20 facility;

21 (2) all containment and removal equipment, including but not
22 limited to vehicles, vessels, pumps, skimmers, booms, chemicals and
23 communications devices to which the facility has access, whether through
24 direct ownership or by contract or membership in an oil cleanup organi-
25 zation; and

26 (3) the terms of agreement and operation plan of any dis-
27 charge cleanup organization to which the owner or operator of the
28 terminal facility belongs.

29 (g) In addition to the other evidence supplied under this section,

1 applicants for a marine carrier certificate shall demonstrate that they
2 can provide all necessary equipment, personnel and supplies to prevent,
3 contain, and remove discharges of oil and other pollutants, and shall
4 submit information to the department in a form satisfactory to it,
5 describing the following:

6 (1) the name and description of each tank vessel for which a
7 certificate is sought that is engaged in, used or capable of being used
8 by the carrier for the marine transportation of crude oil, refined
9 petroleum products or their by-products to and from onshore and offshore
10 oil terminal facilities in this state; the vessel description shall in-
11 clude, but is not limited to, the overall length, beam, draft, gross
12 tonnage, deadweight tonnage, net tonnage, and design capacity for trans-
13 porting crude oil, refined petroleum products or their by-products, and
14 a detailed statement as to the tank vessel's seaworthiness; the depart-
15 ment may, in addition, require that the carrier furnish a marine survey
16 of the tank vessel's condition;

17 (2) a projection of the number of visits each tank vessel
18 will make annually to or from an oil terminal facility in the state, or
19 through the waters of the state;

20 (3) all containment and removal equipment, including but not
21 limited to vehicles, vessels, pumps, skimmers, booms, chemicals, and
22 communication devices to which the carrier or the tank vessel has
23 access, whether through direct ownership or by contract or membership in
24 an approved discharge cleanup organization; and

25 (4) the terms of agreement and operation plan of any dis-
26 charge cleanup organization to which the carrier or the owner or opera-
27 tor of the tank vessel belongs.

28 (h) Upon showing of satisfactory containment and removal or
29 cleanup capability under this section, and upon payment of the annual

1 risk charge, the department shall issue the applicant a certificate of
2 risk avoidance for each terminal facility and related appurtenances or
3 for each tank vessel. In addition to the annual risk charge, the
4 department may assess a penalty for late applications and a fee for the
5 processing of an application for the issuance or renewal of a certi-
6 ficate of risk avoidance under this section. This fee shall be reason-
7 ably related to the administrative costs of verifying the data submitted
8 under (e), (f) and (g) of this section.

9 (i) Oil terminal facilities engaged in the transfer of, and
10 carriers engaged in the marine transportation of crude oil, refined
11 petroleum products or their by-products, that are applicants for, or are
12 holders of, a certificate of risk avoidance under this section are
13 subject to inspection by the department to ensure compliance with the
14 provisions of this chapter.

15 Sec. 30.25.050. PROOF OF FINANCIAL RESPONSIBILITY. (a) Carriers
16 and facilities subject to the provisions of this chapter shall present
17 to the department evidence of insurance, bonding or other forms of
18 financial responsibility acceptable to the department for property
19 damage, personal injuries, loss of income or other losses resulting from
20 the unlawful discharge of crude oil, refined petroleum products or their
21 by-products.

22 (b) The amount of financial responsibility required for each
23 carrier shall not be less than \$20,000,000, or an amount required under
24 applicable federal law or regulation.

25 (c) The amount of financial responsibility required for each
26 facility with a capacity of less than 200,000 barrels of crude oil,
27 refined petroleum products or their by-products is \$100,000; the amount
28 for the same type of facility with a capacity of 200,000 barrels or more
29 of crude oil, refined petroleum products or their by-products is

420,000

1 \$1,000,000.

2 Sec. 30.25.060. EXEMPTIONS. (a) Because of the restricted nature
3 of marina and limited capacity facility operations and the minimal
4 danger to the environment posed by their activities, [a marina used or
5 capable of being used to store less than 10,000 barrels of refined
6 petroleum products or their by-products] or an onshore limited capacity
7 facility used or capable of being used to store less than 25,000 barrels
8 of refined petroleum products or their by-products, is exempt from the
9 proof of financial responsibility requirements of sec. 50 of this
10 chapter and the certificate of risk avoidance requirements of sec. 40 of
11 this chapter.

12 (b) For the purposes of (a) of this section

13 (1) "marina" means a person or facility engaged in the
14 business, whether on shore or offshore, of servicing the fuel require-
15 ments of aircraft, pleasure watercraft, fishing boats and other com-
16 mercial vessels, where the purchaser and the consumer are the same
17 entity, and the fuel capacity of the servicing or serviced vessel is
18 less than 10,000 barrels of refined petroleum products or their by-
19 products, and is not covered by the definition of limited capacity
20 facility in (2) of this subsection; however, a marina does [not] include
21 a seafood processing vessel or tender when, incidental to its seafood
22 processing operations, it transfers refined petroleum products to a
23 fishing boat;]

24 (2) "limited capacity facility" means a small tank farm,
25 small bulk fuel storage facility, or other onshore facility storing
26 refined petroleum products or their by-products, except asphalt, and
27 which is engaged in the business of servicing the requirements of pro-
28 duct transporters and vendors, or storing the fuel requirements for
29 village domestic, school or commercial use, including but not limited to

1 fish processing, logging operations, construction projects or electric
2 power generation.

3 Sec. 30.25.070. SCOPE OF REGULATIONS. The department shall adopt
4 regulations to carry out the purposes of this chapter that do not con-
5 flict with federal law or regulations issued by any federal department
6 or agency, including but not limited to the following:

7 (1) operating and inspection requirements for oil terminal
8 facilities, tank vessels, personnel, equipment, supplies and other
9 matters relating to the insured's operations under sec. 40 of this
10 chapter;

11 (2) procedures and methods of reporting discharges and other
12 occurrences prohibited by this chapter;

13 (3) procedures, methods, means and equipment to be used by
14 persons subject to this chapter and the implementing regulations;

15 (4) procedures, methods, means and equipment to be used in
16 the removal of oil and petroleum pollutants;

17 (5) development and implementation of criteria and plans to
18 meet oil and petroleum pollution discharges, spills or other occurrences
19 of various degrees and kinds;

20 (6) requirements for the safety and operation of tank vessels
21 and motor vehicles, motorized equipment and other equipment relating to
22 the use and operation of terminals, facilities and refineries and the
23 approach and departure from terminals, facilities and refineries;

24 (7) establishment of the risk charges for annual issuance of
25 the certificate of risk avoidance; and

26 (8) those other regulations that may be required by or for
27 emergency conditions or that reasonably may be necessary to carry out
28 the purposes of this chapter.

29 ARTICLE 3. EMERGENCIES.

1 Sec. 30.25.080. GOVERNOR'S POWERS: EMERGENCY PROCLAMATION. (a) In
2 addition to exercising his civil defense powers under AS 26.20, or
3 directing the department to exercise its emergency powers under AS 46.-
4 03.820, when a disaster or catastrophe occurs or appears imminent aris-
5 ing from the discharge of crude oil, refined petroleum products or their
6 by-products, the governor, or in his absence or inability, the lieute-
7 nant governor, shall by proclamation declare (1) that fact and (2) that
8 an emergency exists in one, several or all sections of the state. A
9 copy of the proclamation shall be filed with the lieutenant governor in
10 the manner prescribed by law.

11 (b) The governor has general direction and control of the depart-
12 ment and is responsible for carrying out the provisions of this chapter
13 when a disaster or catastrophe occurs or appears imminent arising from
14 the discharge of crude oil, refined petroleum products or their by-
15 products.

16 (c) In performing his duties under this chapter, the governor may
17 (1) issue, amend and rescind the necessary orders and regu-
18 lations to carry out the provisions of this chapter within the limits of
19 the authority conferred upon him and not inconsistent with the regula-
20 tions and directives of the President of the United States or of any
21 federal department or agency that has specifically authorized emergency
22 functions;

23 (2) delegate any authority vested in him under this chapter
24 and provide for the subdelegation of that authority.

25 (d) When the governor is satisfied that an emergency no longer
26 exists, he shall terminate the proclamation issued under (a) of this
27 section by another proclamation affecting the sections of the state
28 covered by the original proclamation. The proclamation shall be pub-
29 lished in the newspapers of general circulation in the state and posted

1 at other places that the governor, or the person acting in that capa-
2 city, considers appropriate.

3 (e) The provisions of AS 26.20 as they apply to eminent domain and
4 compensation, mutual aid, immunity, aid in emergency, right-of-way, en-
5 forcement and compensation apply to disasters or catastrophes proclaimed
6 by the governor under this chapter.

7 Sec. 30.25.090. INTERAGENCY COOPERATION. In performing his duties
8 under sec. 80 of this chapter, the governor shall secure cooperation
9 from all departments and agencies of the federal government, and the
10 governments of other states and foreign countries, and the political
11 subdivisions of them, as well as from private agencies, in all matters
12 relating to disaster or catastrophe.

13 ARTICLE 4. REMOVAL OF PROHIBITED DISCHARGES.

14 Sec. 30.25.100. IMMEDIATE REMOVAL REQUIRED. A person discharging
15 crude oil, refined petroleum products or their by-products in a manner
16 prohibited by sec. 20 of this chapter shall immediately undertake to
17 remove the discharge to the department's satisfaction. Notwithstanding
18 this requirement, the department may undertake the removal of the
19 discharge and may retain agents and enter into contracts for that
20 purpose notwithstanding the provisions of AS 37.05.220 - 37.05.280.
21 These agents or contractors shall operate under the direction of the
22 department.

23 Sec. 30.25.110. UNEXPLAINED DISCHARGES. An unexplained discharge
24 of crude oil, refined petroleum products or their by-products within the
25 state's jurisdiction or discharge of crude oil, refined petroleum pro-
26 ducts or their by-products occurring in waters beyond state jurisdiction
27 that for any reason penetrates within state jurisdiction shall be re-
28 moved by or under the direction of the department.

29 Sec. 30.25.120. OIL DISCHARGE CLEANUP PERSONNEL, EQUIPMENT, EX-

1 PENSES. (a) The department may establish and maintain at ports, harbors
2 or other locations in the state, the personnel, equipment and supplies
3 that, in its judgment, may be necessary to carry out the provisions of
4 this chapter. Whenever feasible, the department shall enter into
5 contracts with persons or private organizations to provide the oil
6 discharge cleanup personnel, equipment or other services or supplies
7 that may be required to carry out the provisions of this chapter.

8 (b) The salaries of department employees and the cost of equip-
9 ment, supplies and contracts entered into under (a) of this section re-
10 quired to carry out the provisions of this chapter shall be paid from
11 the coastal protection fund.

12 (c) The department and the Departments of Natural Resources and
13 Fish and Game shall consult with one another periodically relative to
14 procedures for the prevention of oil discharges into the coastal and
15 inside coastal waters of the state from offshore drilling production
16 facilities. These departments shall jointly establish predesignated
17 sites for the deposit of oil discharge refuse and waste.

18 (d) Those inspection and enforcement employees of the department
19 designated by the commissioner are peace officers under AS 01.10.060(6)
20 in their line duty under this chapter and AS 46.03.

21 (e) Expenses involved in the removal of discharges, whether by
22 the person causing the discharge, the person reporting it, or the depart-
23 ment by itself, or through its agents or contracts shall be paid solely
24 from the coastal protection fund established under this chapter.

25 ARTICLE 5. ENFORCEMENT; PENALTIES.

26 Sec. 30.25.130. ADMINISTRATIVE ADJUDICATION. When it appears,
27 after investigation, that there is a violation of a regulation, order or
28 certificate issued by the department, the department shall proceed in
29 accordance with the provisions of this chapter and the regulations

1 adopted under it.

2 Sec. 30.25.140. CRIMINAL SANCTIONS. A person who violates sec. 20
3 of this chapter is punishable under AS 46.03.760 or 46.03.790. A person
4 who falsifies information required under sec. 40 of this chapter is
5 punishable under AS 46.03.760 or 46.03.790.

6 Sec. 30.25.150. CIVIL PENALTIES. A person who violates a provi-
7 sion of this chapter or a regulation or order of the department is
8 subject to the penalties prescribed in AS 46.03.760 - 46.03.780.

9 Sec. 30.25.160. INJUNCTIVE RELIEF. A person may be enjoined by
10 the superior court from committing a violation of a provision of this
11 chapter, or the implementing regulations.

12 Sec. 30.25.170. ACTIONS TO RECOVER PENALTIES, DAMAGES. (a)
13 Actions to recover penalties or damages under this chapter shall be
14 brought by the attorney general in a court of competent jurisdiction.

15 (b) All penalties recovered under sec. 140 or 150 of this chapter
16 shall be paid to the department and deposited by it in the coastal pro-
17 tecton fund.

18 Sec. 30.25.180. EACH VIOLATION IS A SEPARATE OFFENSE. Each viola-
19 tion of a provision of this chapter, an implementing regulation, or an
20 order or certificate issued by the department under them, is a separate
21 and distinct offense and, in case of a continuing violation, each day
22 the violation continues constitutes a separate offense.

23 Sec. 30.25.190. PENALTIES CUMULATIVE. (a) All penalties imposed
24 under this chapter are cumulative.

25 (b) An action to recover a civil penalty is not a bar to an en-
26 forcement proceeding to require compliance, or to any other remedy or
27 sanction provided by this chapter.

28 Sec. 30.25.200. JOINDER OF ACTIONS. Under the applicable court
29 rules, appeals from orders of the department, and actions for recovery

1 of damages or penalties may be joined. The court may in the interests
2 of justice separate the actions.

3 Sec. 30.25.210. PRIVATE CAUSE OF ACTION. (a) A person subjected
4 to a prohibited discharge in violation of this chapter may sue in a
5 state court of appropriate jurisdiction for damages resulting from the
6 prohibited discharge.

7 (b) A person recovering damages under this section is entitled to
8 a reasonable attorney fee, fixed by the court, to be taxed and collected
9 as costs of the suit.

10 ARTICLE 6. COASTAL PROTECTION FUND.

11 Sec. 30.25.220. FUND CREATED; USES; LIMITATIONS; CHARGES. (a) The
12 coastal protection fund is created as a revolving fund. The fund shall
13 be used by the department to carry out the purposes of this chapter.

14 (b) To this fund shall be credited all risk charges, penalties, and ^{damages}
15 other fees or charges established under or related to this chapter. To
16 this fund shall be charged all expenses of the department related to
17 this chapter, including administrative expenses, and costs of abatement,
18 containment or removal of discharges of pollutants.

19 Sec. 30.25.230. SURPLUS FUNDS. Money in the fund not currently
20 needed to meet the obligations of the department in the exercise of its
21 responsibilities under this chapter shall be deposited with the com-
22 missioner of revenue to the credit of the fund and shall be invested in
23 the manner provided in AS 37.10. Interest received on that investment
24 shall be credited to the fund.

25 Sec. 30.25.240. RESEARCH AND DEVELOPMENT. The department may
26 allocate annually not more than five per cent of the amount ^{then} [than] cur-
27 rently in the fund for research and development into the causes, effects,
28 prevention and removal of pollution of the aquatic environment caused by
29 crude oil, refined petroleum products, or their by-products. These

1 allocations shall be made in accordance with the Executive Budget Act
2 (AS 37.07).

3 Sec. 30.25.250. FUNDING; RISK CHARGES. (a) Annual risk charges
4 for each classification of certificates issued by the department under
5 sec. 40 of this chapter shall be based on the following factors:

6 (1) data submitted by applicants under that section;

7 (2) with respect to the issuance of certificates to carriers
8 engaged in the marine transportation of crude oil, refined petroleum
9 products or their by-products, the design characteristics of the tank
10 vessel for which the certificate is issued, including but not limited to

11 (A) the presence or absence of the standard safety or
12 maneuvering capability features prescribed in AS 30.20.020; and

13 (B) if the tank vessel is ~~40,000~~ deadweight tons or
14 more, the presence or absence of

15 (1) flue gas or other gas inerting systems to be
16 prescribed by the department by regulation; and

17 (ii) segregated ballast tanks, the combined capacity
18 of which shall be of sufficient size, as prescribed by the
19 department, so that the tank vessel can operate safely on
20 ballast voyages without recourse to the use of cargo tanks for
21 water ballast, and which is achieved in part by fitting,
22 throughout the cargo-carrying length or compartments of the
23 tank vessel: either a double bottom of a minimum height of
24 one-fifteenth of the beam or two meters, whichever is the
25 greater, or a double hull of a minimum of two meters;

26 (3) the risk experience of oil terminal facilities and
27 carriers during the previous period for which the certificate of risk
28 avoidance was issued and risk charges paid; and

29 (4) any other data, information or standards the department

1 considers relevant or essential to an appropriate determination of the
2 annual charges for the issuance of certificates of risk avoidance under
3 sec. 40 of this chapter.

4 (b) The annual risk charge for a tank vessel that lacks some or
5 all of the design characteristics prescribed in (a)(2) of this section
6 shall be increased accordingly in the manner prescribed by the depart-
7 ment. The annual risk charge shall be reduced when the tank vessel is
8 equipped or fitted with the design characteristics prescribed in (a)(2)
9 of this section.

10 (c) Charges may be adjusted from time to time during each year to
11 allow for risk experience or the equipping or fitting of design charac-
12 teristics prescribed in (a)(2) of this section during that period.

13 (d) The aggregate annual risk charges to be collected each year
14 shall be sufficient to cover anticipated authorized disbursements from
15 the fund for that year, except costs involved in the abatement, con-
16 tainment or removal of pollution under sec. 260(a)(2) of this chapter,
17 plus 20 per cent of the amount necessary to fund the pollution abatement
18 expense reserve established under (f) of this section.

19 (e) At the time the full pollution abatement expense reserve has
20 been collected, there shall be returned to those holders of certificates
21 of risk avoidance who paid into the fund in its first year of operation
22 their pro rata share of the excess, if any, of risk charges paid over
23 all disbursements from the fund made for that year plus interest on the
24 amount of the excess returned. In each year thereafter, so long as the
25 pollution abatement expense reserve is maintained, excess risk charges,
26 if any, shall be paid to the certificate holders in the year following
27 the last year for which a return of excess risk charge has been made if
28 due or calculated and found not due.

29 (f) The initial pollution abatement expense reserve is \$30,000,000

1 At least once every five years during the fund's operation, the depart-
2 ment shall determine an appropriate amount necessary to maintain ade-
3 quate funds to ^{contain or remove} abate anticipated oil pollution and establish a new
4 amount for the pollution abatement expense reserve.

5 (g) Risk charges shall be paid to the department and upon receipt
6 by it deposited in the coastal protection fund.

7 Sec. 30.25.260. DISBURSEMENTS FROM FUND. (a) Money in the
8 coastal protection fund may be disbursed for the following purposes and
9 no other, subject to the provisions of AS 37.07 and AS 37.10:

10 (1) administrative expenses, personnel expenses, contract
11 fees, and equipment and supplies costs of the department related to the
12 enforcement of this chapter;

13 (2) all costs involved in the abatement, containment or
14 removal of pollution related to the discharge of crude oil, refined
15 petroleum products or their by-products covered by this chapter;

16 (3) sums allocated to research and development in accordance
17 with sec. 240 of this chapter; and

18 (4) payment of costs of insurance by the state to implement
19 this chapter.

20 (b) The department shall submit annually to the legislature,
21 through the Department of Administration and the governor, in accordance
22 with the Executive Budget Act (AS 37.07), its recommendations for dis-
23 bursements from the fund under (a) of this section and sec. 240 of this
24 chapter.

25 Sec. 30.25.270. SPECIAL RISK CHARGES. (a) If a discharge occurs
26 in any year necessitating disbursements from the fund in excess of
27 expenses funded by that year's charges, the department shall collect
28 from all carriers and facilities subject to the provisions of this
29 chapter at the time the discharge occurs that amount which will

1 reimburse the fund by the aggregate amount of the excess expenditures.

2 (b) The amount to be collected shall be prorated among those
3 carriers and facilities subject to this chapter at the time of the dis-
4 charge and shall be determined on the basis of the same criteria used to
5 determine annual risk charges under sec. 250 of this chapter.

6 (c) If a carrier or facility subject to (a) of this section re-
7 fuses to pay the special risk charges established under (a) of this
8 section, those charges shall be prorated among the remaining carriers or
9 facilities.

10 (d) Requests for payment of the special risk charges established
11 under (a) of this section, if not paid within 30 days of demand, shall
12 be turned over to the Department of Administration or the Department of
13 Law, or both, for collection.

14 Sec. 30.25.230. OIL TERMINAL FACILITY, CARRIER STRICTLY LIABLE. An
15 operator of an oil terminal facility and a carrier are strictly liable,
16 without regard to fault, under AS 46.03.822 - 46.03.828 for all acts and
17 omissions of their employees and agents. The liability of a carrier
18 extends from the time the vessel enters state waters until the time the
19 vessel leaves state waters.

20 ARTICLE 7. GENERAL, MISCELLANEOUS PROVISIONS.

21 Sec. 30.25.290. INTERSTATE, FOREIGN COMPACTS AUTHORIZED. The
22 governor may execute supplementary agreements, reciprocal arrangements
23 or compacts with any other state or with foreign governments, subject to
24 the approval of the legislature and of the Congress of the United States
25 that may be required by applicable provisions of law, for the purpose of
26 implementing this chapter.

27 Sec. 30.25.300. ANNUAL REPORT. The department shall prepare and
28 publish an annual report to the governor and to the legislature review-
29 ing its work under this chapter and shall include in the report its

1 recommendations for the enactment of appropriate legislation.

2 Sec. 30.25.310. MUNICIPAL ORDINANCES, REGULATIONS; POWERS LIMITED.
3 If a conflict occurs between a provision of this chapter, or a regula-
4 tion, certificate, order, decision or other determination of the depart-
5 ment and a charter, ordinance, permit, regulation, franchise, decision
6 or other determination of a municipality, the provisions of this chapter
7 or a regulation, certificate, order, decision or other determination of
8 the department prevails. However, nothing in this chapter may be con-
9 strued to preclude a municipality, by ordinance or regulation, from ex-
10 exercising its police powers in the area regulated by this chapter.

11 Sec. 30.25.320. APPLICATION OF ADMINISTRATIVE PROCEDURE ACT. (a)
12 The administrative adjudication procedures of the Administrative
13 Procedure Act (AS 44.62) do not apply to the adjudicatory, certificate
14 issuing, or other proceedings of the department under this chapter.
15 However,

16 (1) final administrative determinations or orders by the
17 department are subject to judicial review under that Act; and

18 (2) department hearings shall be held only after at least 10
19 days public notice, unless it is an emergency hearing; they shall be
20 held at a place most convenient for those interested in the subject of
21 the hearing.

22 (b) Notwithstanding the provisions of (a)(1) of this section, no
23 regulation or order of the department may be stayed pending appeal under
24 the provisions of the Administrative Procedure Act.

25 (c) The Administrative Procedure Act applies to regulations pro-
26 mulgated by the department.

27 Sec. 30.25.330. LIMITATION ON LIABILITY OF THE STATE. Neither the
28 state nor the fund is liable for any act or omission arising out of the
29 enforcement or implementation of this chapter or the failure to enforce

1 or implement this chapter.

2 Sec. 30.25.340. CONSTRUCTION. This chapter shall be liberally
3 construed to effect the purposes set out in sec. 10 of this chapter.

4 Sec. 30.25.350. DEFINITIONS. In this chapter, unless the context
5 requires otherwise,

6 (1) "barrel" means 42 U. S. gallons at 60 degrees Fahrenheit;

7 (2) "board" means a board of arbitration established under
8 this chapter;

9 (3) "carrier" means a person who owns or who, for compensa-
10 tion, operates or otherwise provides a vessel engaged in, used or capa-
11 ble of being used for, the marine transportation of crude oil, refined
12 petroleum products or their by-products on the waters of this state;

13 (4) "commissioner" means the commissioner of environmental
14 conservation;

15 (5) "deadweight tonnage" or "DWT" means the difference in
16 metric tons between the lightweight displacement and the total displace-
17 ment of a vessel measured in water of specific gravity 1.025 at the load
18 waterline corresponding to the assigned summer freeboard;

19 (6) "department" means the Department of Environmental Con-
20 servation;

21 (7) "discharge" means any spilling, leaking, pumping, pour-
22 ing, emitting, emptying, or dumping;

23 (8) "fund" means the state coastal protection fund;

24 (9) "municipality" means a home rule or general law borough
25 or city including but not limited to a unified municipality organized
26 under AS 29.68;

27 (10) "crude oil, refined petroleum products, or their by-
28 products" means oil of any kind and in any form including, but not
29 limited to, petroleum, fuel oil, gasoline, lubricating oils, oily

1 sludge, oil refuse, oil mixed with other wastes, crude oils, liquefied
2 natural gas, propane, butane or other liquid hydrocarbons regardless of
3 specific gravity;

4 (11) "oil terminal facility" means an onshore or offshore
5 facility of any kind and related appurtenances, including but not
6 limited to a deepwater port, located in, on, or under the surface of any
7 land or water of the state, including tide and submerged land, which is
8 used or capable of being used for the purpose of transferring, proces-
9 sing or refining, or storing crude oil, refined petroleum products or
10 their by-products; a vessel shall be considered an oil terminal facility
11 only in the event of a ship-to-ship transfer of crude oil, refined
12 petroleum products or their by-products, and only that vessel going to
13 or coming from the place of transfer and the oil terminal facility;

14 however, an oil terminal facility does not include a seafood processing
15 vessel or tender when, incidental to its seafood processing operations,
16 it transfers refined petroleum products to a fishing boat;

17 (12) "operate" or "operator" means a person owning or oper-
18 ating an oil terminal facility or a carrier whether by lease, contract
19 or any other form of agreement, or a person who navigates or has charge
20 of the navigation or use of a vessel;

21 (13) "transferred" includes both onloading and offloading,
22 between terminal and vessel and vessel to vessel;

23 (14) "tank vessel" means a self-propelled vessel that is
24 specially constructed or converted to carry liquid bulk cargo in tanks
25 and includes tankers, tankships, and combination carriers when carrying
26 crude oil, petroleum products or their by-products in bulk; it does not
27 include vessels carrying crude oil, petroleum products or their by-
28 products in drums, barrels, or other packages, or vessels carrying
29 crude oil, petroleum products or their by-products as fuel or stores for

1 that vessel;

2 (15) "waters of the state" means the navigable waters within
3 the territorial limits of the state, and the marginal sea adjacent to
4 the state, and as defined in AS 44.03 and AS 46.03.900(22).

5 Sec. 30.25.360. SHORT TITLE. This chapter may be cited as the
6 Alaska Oil Discharge Prevention and Pollution Control Act.

7 * Sec. 3. AS 46.03.750 is amended by adding a new subsection to read:

8 (e) Cargo in tank vessels, as defined in AS 30.20.060(9), engaged
9 in the marine transportation of crude oil, refined petroleum products or
10 their by-products may not be placed in segregated ballast tanks, nor may
11 ballast be placed in cargo tanks of those tank vessels having segregated
12 ballast systems. However, the department may by regulation permit the
13 placing of ballast in the cargo tanks of those vessels in emergency
14 situations. All ballast placed in cargo tanks shall be processed by or
15 in an onshore ballast water treatment facility and may not be discharged
16 into the waters of the state.

17 * Sec. 4. AS 46.03 is amended by adding a new section to read:

18 Sec. 46.03.755. DISCHARGE REPORTING. (a) A person in charge of a
19 facility, operation or vessel, as soon as he has knowledge of any dis-
20 charge from the facility, operation or vessel in violation of sec. 740
21 or 750 of this chapter or AS 30.25.020, shall immediately notify the
22 department of the discharge.

23 (b) Notwithstanding (a) of this section, the department may enter
24 into a written agreement with a person for the periodic reporting of
25 minor discharges other than into the waters of the state.

26 * Sec. 5. AS 46.03.760 is repealed and re-enacted to read:

27 Sec. 46.03.760. CIVIL ACTION FOR POLLUTION; DAMAGES. (a) A
28 person who violates or causes or permits to be violated a provision of
29 this chapter or AS 30.25.020, or a regulation, a lawful order of the

1 department, or a permit or certificate, or term or condition of a permit
2 or certificate issued under this chapter or AS 30.25 is liable, in a
3 civil action, to the state for a sum to be assessed by the court of not
4 less than \$500 nor more than \$100,000 for the initial violation, nor
5 more than \$5,000 for each day thereafter on which the violation con-
6 tinues, and which shall reflect, when applicable,

7 (1) reasonable compensation in the nature of liquidated
8 damages for any adverse environmental effects caused by the violation,
9 which shall be determined by the court according to the toxicity, de-
10 gradability and dispersal characteristics of the substance discharged,
11 the sensitivity of the receiving environment, and the degree to which
12 the discharge degrades existing environmental quality;

13 (2) reasonable costs incurred by the state in detection,
14 investigation, and attempted correction of the violation, except dis-
15 bursements for pollution abatement costs under AS 30.25.260(a)(2); and

16 (3) the economic savings realized by the person in not com-
17 plying with the requirement for which a violation is charged.

18 (b) Actions under this section may not be used for punitive pur-
19 poses, and sums assessed by the court must be compensatory and remedial
20 in nature.

21 (c) The court, upon motion of the department or upon its own
22 motion, may defer assessment of all or part of that portion of the sum
23 imposed upon a person under (a)(3) of this section conditioned upon the
24 person complying, within the shortest feasible time, with the require-
25 ment for which a violation is shown.

26 (d) As used in this section, "economic savings" means that sum
27 which a person would be required to expend for the planning, acquisi-
28 tion, siting, construction, installation and operation of facilities
29 necessary to effect compliance with the standard violated.

Coastal Protection Fund
Return state damages
from persons not having
insurance

(e) In addition to liability under (a) - (d) of this section, a person who violates or causes or permits to be violated a provision of secs. 740 - 750 of this chapter is liable to the state, in a civil action brought under sec. 822 of this chapter, for the full amount of actual damages caused to the state by the violation, including direct and indirect costs associated with the abatement, containment or removal of the pollutant, restoration of the environment to its former state, and all incidental administrative costs. Except for special risk charges collected under AS 30.25.270, a person holding a risk avoidance certificate may not be held liable for costs associated with the abatement, containment or removal of the pollutant.

* Sec. 6. AS 46.03 is amended by adding a new section to read:

Sec. 46.03.765. INJUNCTIONS. The superior court has jurisdiction to enj in a violation of this chapter or AS 30.25, or of a regulation, lawful order of the department, or permit or certificate, or term or condition of a permit or certificate issued under this chapter or AS 30.25. In actions brought under this section, temporary or preliminary relief may be obtained upon a showing of an imminent threat of continued violation, and probable success on the merits, without the necessity of demonstrating physical irreparable harm. The balance of equities in actions under this section may affect the timing of compliance, but not the necessity of compliance within a reasonable period of time.

* Sec. 7. AS 46.03.780(a) is amended to read:

(a) A person who violates a provision of this chapter or AS 30.25, or who fails to perform a duty imposed by this chapter or AS 30.25, or violates or disregards an order, permit, or other determination of the department made under the provisions of this chapter or AS 30.25, respectively, and thereby causes the death of fish, animals, or

1 vegetation or otherwise injures or degrades the environment of the state
2 is liable to the state for damages

3 * Sec. 8. AS 46.03.790 is repealed and re-enacted to read:

4 Sec. 46.03.790. CRIMINAL PENALTIES. (a) A person who violates or
5 who causes or permits a violation of a provision of this chapter or
6 AS 30.25, or of a regulation, lawful order of the department, or permit
7 or certificate, or term or condition of a permit or certificate issued
8 under this chapter or AS 30.25 is guilty of a misdemeanor and, upon
9 conviction, is punishable by a fine of not more than \$25,000 and costs
10 of prosecution.

11 (b) A person who wilfully violates a provision of this chapter, or
12 of a regulation, lawful order of the department, or permit or certifi-
13 cate, or term or condition of a permit or certificate issued under this
14 chapter or AS 30.25 is guilty of a misdemeanor and, upon conviction, is
15 punishable by a fine of not more than \$25,000 and costs of prosecution,
16 or by imprisonment for not more than one year, or by fine, costs, and
17 imprisonment.

18 (c) Each day on which a violation described in (a) or (b) of this
19 section occurs is considered a separate violation.

20 (d) A person who fails to provide or falsely states information
21 required under sec. 755 of this chapter or AS 30.25 is guilty of a mis-
22 demeanor and, upon conviction, is punishable by a fine of not more than
23 \$25,000, or by imprisonment for not more than one year, or by both.
24 Each unlawful act constitutes a separate offense.

25 * Sec. 9. AS 46.03 is amended by adding a new section to read:

26 Sec. 46.03.850. COMPLIANCE ORDER. (a) When, in the opinion of
27 the department, a person is violating or is about to violate a provision
28 of this chapter or AS 30.25, or a regulation or lawful order of the
29 department, or a permit or certificate, or a term or condition of a

1 permit or certificate issued by the department under this chapter or
2 AS 30.25, the department may notify the person of its determination by
3 personal service or certified mail. The determination and notice do not
4 constitute an order under sec. 820 of this chapter.

5 (b) The recipient of the determination must file with the depart-
6 ment, within the time period specified in the notice, a report stating
7 what measures have been and are being taken, or are proposed to be
8 taken, to correct or control the conditions outlined in the notice.

9 (c) After the report is filed under (b) of this section or the
10 time period specified for it has elapsed, the department may issue a
11 compliance order in conformity with the authority of the department and
12 the public policy declared in sec. 10 of this chapter. A copy of the
13 compliance order shall be served personally or sent by certified mail to
14 the person affected. A compliance order is effective upon receipt.

15 (d) Within 30 days after receipt the recipient may request a
16 hearing to review the compliance order. Failure to request a hearing
17 within 30 days after the receipt of a compliance order constitutes a
18 waiver of the recipient's right of review.

19 (e) The department shall hold a hearing within 20 days after
20 receipt of a request for one under (d) of this section. After the hear-
21 ing the department may rescind, modify or affirm the compliance order.

22 (f) The attorney general shall seek enforcement of a compliance
23 order.

24 * Sec. 10. AS 46.03 is amended by adding a new section to read:

25 Sec. 46.03.875. REMEDIES CUMULATIVE. All remedies provided by
26 this chapter or AS 30.25 are cumulative, and the securing of relief,
27 whether injunctive, civil or criminal, under a section of this chapter
28 or AS 30.25 does not estop the state from obtaining relief under any
29 other section of this chapter or AS 30.25.

1 * Sec. 11. SEVERABILITY. If any provision of this Act or the application
2 of it to any person or circumstance is held invalid, particularly those pro-
3 visions that establish incentives for carriers to use vessels with certain
4 safety or maneuvering capability features, the remainder of this Act and the
5 application to other persons or circumstances, including but not limited to
6 those provisions which create a coastal protection fund, shall not be af-
7 fected.

8 * Sec. 12. This Act takes effect July 1, 1977.
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A M E N D M E N T

TO: HCS CSSSB 406 (Judiciary)

On page 20, strike out lines 17 - 25, inclusive, and insert:

(ii) partial, complete or defensively placed segregated ballast tanks or systems, ^{may be considered as a des} ~~the combined capacity of which shall be of sufficient size, as prescribed by the department, so that the tank vessel can operate safely on ballast voyages without recourse to the use of cargo tanks for water ballast; or~~

(iii) throughout the cargo-carrying length or compartments of the tank vessel: either a double bottom of a minimum height of one-fifteenth of the beam or two meters, whichever is the greater, or a double hull of a minimum of two meters;

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PROPOSED RULES

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my file

provided however that a certification of such change shall be provided to such individual within such period.

4. Section 1224.1-17 is added to provide for internal appeal of any denial of access.

§ 1224.1-17 Denial of access and appeals with respect hereto.

In the event that the agency finds it necessary to deny any individual access to a record about such individual pursuant to provisions of the Privacy Act or of these regulations, a response to the original request shall be made in writing within ten working days from the date of such initial request. The denial shall specify the reasons for such refusal or denial and advise the individual of the reasons therefore, and of his or her right to an appeal within the agency and/or judicial review under the provisions of the Privacy Act.

(a) In the event an individual desires to appeal any denial of access, he may do so in writing by addressing such appeal to the attention of the Deputy Director, ACTION, c/o the Director, AF/Administrative Services, 806 Connecticut Avenue, NW., Washington, D.C. 20525. Although there is no time limit for such appeals, ACTION shall be under no obligation to maintain copies of original requests or responses thereto beyond 180 days from the date of the original request.

(b) The Deputy Director, or his designee, shall review a request from a denial of access and shall make a determination with respect to such appeal within 20 days after receipt thereof. Notice of such determination shall be provided to the individual making the request in writing. If such appeal is denied in whole or in part, such notice shall include notification of the right of the person making such requests to have judicial review of the denial as provided in the Privacy Act (5 U.S.C. 552a).

Any person interested in the proposed regulations as amended herein may submit written comments or views on such regulations by addressing ACTION/Office of the General Counsel, M 607, 806 Connecticut Avenue, NW., Washington, D.C. 20525 on or before June 14, 1976. All written comments received on or before that day will be considered by the agency in formulating final rule changes.

Dated: May 5, 1976.

JOHN L. GANLEY,
Deputy Director, ACTION.
[FR Doc. 76-13046 Filed 5-12-76; 8:45 am]

DEPARTMENT OF
TRANSPORTATION

Coast Guard
[33 CFR Part 157]
[CGD 76-075]

CERTAIN EXISTING TANK VESSELS
SEGREGATED BALLAST

Advance Notice of Proposed Rule Making

• Purpose. The Coast Guard is considering developing regulatory requirements

for a segregated ballast capability for certain existing tank vessels of 70,000 DWT and over. The purpose of this advance notice is to solicit comments from the public on the cost involved in retrofitting existing vessels, the inflationary impact on the economy by requiring this retrofitting, and on technical and other possible problems that could be expected during and as a result of implementing this concept.

Written comments. All persons are invited to participate in the proposed rule making by submitting their views, data, arguments, objections, and comments to the Executive Secretary, Marine Safety Council (G-CMC/81), Room 8117, U.S. Coast Guard, Washington, D.C. 20500. Each person submitting written comments should include his name and address, identify this notice (CGD 76-075), and give reasons for any recommendations. Comments received will be available for examination by interested persons in Room 8117, U.S. Coast Guard Headquarters, Washington, D.C.

Closing date for comments. All communications received before June 30, 1976, will be evaluated before further action is taken.

Background: The International Convention for the Prevention of Pollution from Ships, 1973, requires new tankers of 70,000 DWT and over to have a segregated ballast capability. The concept of segregated ballast is that a tank vessel must have sufficient spaces set aside for carrying ballast water separately so that in all but unusually rough weather conditions, it will not be necessary to introduce ballast water into cargo tank spaces. In the October 14, 1975 issue of the FEDERAL REGISTER (40 FR 40280) this concept was implemented for certain new U.S. tank vessels carrying oil in domestic trade. In the FEDERAL REGISTER (41 FR 16850) of April 15, 1976 the Coast Guard proposed that this concept apply to certain new U.S. tank vessels in foreign trade and certain new foreign tank vessels entering the navigable waters of the United States. New vessels are defined by calendar dates in the regulations and the proposed regulations. Existing vessels are those vessels that are not within the definition of new vessels.

Resolution 3 adopted by the International Conference on Marine Pollution, 1973, recommends that governments undertake concerted efforts to reduce the discharge of oil from ships into the sea with a view to the complete elimination of international pollution as soon as possible but not later than the end of the present decade. Segregated ballast, as stated in the Coast Guard Final Environmental Impact Statement, Regulations for Tank Vessels Engaged in the Carriage of Oil in Domestic Trade, August 1975, is a concept that has gained worldwide acceptance for offering major environmental benefits. The Coast Guard is now considering extending the segregated ballast concept to existing U.S. tank vessels of 70,000 DWT and over and to existing foreign tank vessels of 70,000 DWT and over that enter the navigable waters of the United States.

According to both domestic and international studies available to the Coast Guard, the retrofitting of existing tankers with segregated ballast capability appears feasible because:

(a) There presently exists on a worldwide basis a considerable excess of available tank vessel tonnage capacity, a condition projected to continue for at least the next five years. Because of this excess capacity, and allowing a modest period for necessary shipyard alternation, the requirement should result in minimal disruption of the oil transportation system.

(b) The vessel alterations will not entail major conversions but in most instances would at least require changes to the cargo and ballast piping systems.

(c) Increases in consumer cost of oil and oil products as a result of this contemplated action should have a minimum impact on the present inflationary trend. There will be some small increase in the transportation cost of oil because of this action; however, transportation costs are a relatively small part of the price consumers pay today. Further, this action should reduce the size scale of needed reception facilities at loading ports.

It is recognized by the Coast Guard that segregated ballast alone will not eliminate the need for good operational practice on board tankers. Cargo tanks must be washed in order to remove sludge and before entering shipyards; however, segregated ballast will eliminate the major source of operational pollution, dirty ballast. Emerging techniques for crude oil washing of cargo tanks (under development by industry), in combination with improved methods of stripping cargo tanks and cargo piping systems, hold promise for even further reduction of the amount of oil discharged into the sea from tankers.

The Coast Guard has examined and will continue to examine the feasibility of requiring retrofitting of certain existing tankers with segregated ballast capacity. The purpose of this advance notice is to learn as much as possible from the public and industry as to the costs involved, the expected inflationary impact, and the technical and other possible problems resulting from the contemplated retrofitting of existing vessels.

(R.S. 4417a (3) and (7), as amended (40 U.S.C. 391a (3) and (7); 40 CFR 1.46(n) (4).)

J. V. CAPPARY,
Captain, U.S. Coast Guard, Acting Chief, Office of Merchant Marine Safety.

MAY 6, 1976.
[FR Doc. 76-13704 Filed 5-12-76; 8:45 am]

[33 CFR Part 164]
[CGD 76-025]

TUG ASSISTANCE IN CONFINED WATERS
Proposed Minimum Standards
Correction

In FR Doc. 76-13210, appearing in the issue for Thursday, May 6, 1976, on page

18771, in the second column, in paragraph 6, the word "drugs" appearing in the third sentence should read, "tugs".

Also, in paragraph 8, the word "bands" appearing in the fourth sentence should read "bends".

Finally, the word "In" appearing at the beginning of paragraph 10 should read "Is".

[33 CFR Part 164]

[COD 74-77]

NAVIGATION SAFETY REGULATIONS

Proposed Testing Requirements

Correction

In FR Doc. 76-13209, appearing in the issue for Thursday, May 6, 1976, on page 18767, in the third column, in the fifth line of the last paragraph, the sentence which reads as follows: "The misapplication or reversal orders to . . ." should read as follows: "The misapplication or reversal of orders to . . ."

[33 CFR Part 164]

[COD 76-051]

MINIMUM NET BOTTOM CLEARANCE

Request for Comments

Correction

In FR Doc. 76-13211, appearing on page 18771, in the issue for Thursday, May 6, 1976, in the first line of the authority citation which reads as follows: ". . . 88 Stat. 8662" should appear as follows: ". . . 88 Stat. 862."

Federal Aviation Administration

[14 CFR Part 39]

[Docket No. 15698]

MESSERSCHMITT - Bolkow - Blohm Model BO-105A and BO-105C Helicopters

Airworthiness Directives; Notice of Proposed Rule Making

The Federal Aviation Administration is considering amending Part 39 of the Federal Aviation Regulations by adding an airworthiness directive applicable to certain Messerschmitt-Bolkow-Blohm (MBB) Model BO-105A and BO-105C helicopters. There have been reports of cracks occurring in the piston rods of the main rotor hydraulic servo actuators that could result in the failure of an actuator and loss of control of the helicopter. Since this condition is likely to exist or develop in other helicopters of the same type design, the proposed airworthiness directive would require periodic inspections and the replacement of the piston rods in the main rotor hydraulic servo actuators on certain MBB Model BO-105A and BO-105C helicopters.

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the docket number and be submitted in du-

PLICATE to the Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket, AGC-24, 800 Independence Avenue, S.W. Washington, D.C. 20591. All communications received on or before June 14, 1976, will be considered by the Administrator before taking action upon the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments will be available, both before and after the closing date for comments, in the rules docket for examination by interested persons.

This amendment is proposed under the authority of sections 313(a), 601, and 603 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421, and 1423) and of section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

In consideration of the foregoing, it is proposed to amend § 39.13 of Part 39 of the Federal Aviation Regulations by adding the following new airworthiness directive:

MESSERSCHMITT - Bolkow - Blohm GmbH (MBB). Applies to Model BO-105A and BO-105C helicopters, certificated in all categories, incorporating Teledyne Hydra-Power hydraulic actuators, P/N 106-45021, with the following serial numbers: 1012, 1114, 1018, 1016, 1017, 1018, 1019, 1021, 1023, 1027, 1028, 1029, 1030, 1032, 1034, 1035, 1037, 1038, 1040, 1041, 1043, 1044, 1045, 1046, 1049, 1050, 1057, 1062, 1064, 1065, 1066, 1069, 1071, 1075, 1091, 1093, 1101, 1104, 1109, 1113, 1119, 1121, 1123, 1126, 1127, 1150, 1160, and 1161 which have piston rods, P/N D133-750.08E, with S/N's 101 through 440.

Compliance is required as indicated, unless already accomplished.

To prevent possible failure of the main rotor hydraulic actuator and loss of control of the helicopter, accomplish the following:

(a) Before the accumulation of 600 hours total helicopter time in service or within the next 25 hours time in service after the effective date of this AD, whichever occurs later, and thereafter at intervals not to exceed 600 hours time in service from the last inspection until modified in accordance with paragraph (e) of this AD, comply with paragraph (b) of this AD.

(b) Inspect the piston rods, P/N D133-750.08E, in the hydraulic actuators, P/N 106-45021, for cracks, using a dye penetrant method in accordance with Paragraph 2.B. of the "Accomplishment General" section of MBB Service Bulletin No. 40-10, dated June 2, 1976, or an FAA-approved equivalent.

(c) If a crack is found in a piston rod during an inspection specified in paragraph (b) of this AD, before further flight, replace the cracked piston rod with a serviceable part of same part number and continue to inspect in accordance with paragraph (b) of this AD at intervals not to exceed 600 hours time in service until the modification specified in paragraph (e) of this AD is accomplished.

(d) Comply with paragraph (e) of this AD as follows:

(1) For helicopters with less than 1800 hours total time in service on the effective date of this AD and for which it has been less than 4 years since the issuance of its airworthiness certificate, comply with paragraph (e) of this AD in accordance with paragraph (1) or (2), whichever occurs later.

(2) Before the accumulation of 1800 hours total time in service or within four years of the date of issuance of its airworthiness certificate, whichever occurs sooner.

(1) Within the next 25 hours time in service after the effective date of this AD.

(2) For helicopters with 1800 hours or more total time in service on the effective date of this AD or helicopters for which the effective date of this AD is four years or more after the date of issuance of its airworthiness certificate, comply with paragraph (e) of this AD within the next 25 hours time in service after the effective date of this AD.

(e) Disassemble the Teledyne Hydra-Power actuators, P/N 106-45021, and replace the piston rods, P/N D133-750.08E, which have S/N's 101 through 440 with serviceable parts of the same part number which have serial numbers other than 101 through 440.

Issued in Washington, D.C., on May 6, 1976.

JAMES M. VINES,

Acting Director,

Flight Standards Service.

[FR Doc. 76-13706 Filed 5-12-76; 8:46 am]

[14 CFR Part 39]

[Docket No. 75-NE-17]

PRATT & WHITNEY JT9D MODEL ENGINES

Withdrawal of Notice of Proposed Rulemaking

In the April 23, 1975, issue of the Federal Register (40 FR 17852), the Federal Aviation Administration published a Notice of Proposed Rulemaking (Docket No. 75-NE-17) to amend Part 39 of the Federal Aviation Regulations by adding an airworthiness directive applicable to the Pratt & Whitney JT9D turbofan engine. The proposed airworthiness directive required an inspection for residual nickel chloride on the internal air surface of the T₄ temperature sensing bellows.

Two comments were received on the proposal. One commentator suggested some changes of an editorial nature, and also suggested that the inspection interval of 600 hours was unnecessarily restrictive in view of service experience. This commentator recommended that the inspection interval be extended to 1000 hours. The other commentator questioned the need for an AD on this subject since actual service experience indicated that there have been no in-flight shutdowns that could be attributed to a corroded sensing bellows. This commentator also recommended that the inspection interval be extended to 1000 hours and that the applicability of the AD be limited.

Since the publication of the NPRM in the Federal Register, additional evidence has become available which indicates that the extent of corrosion is not as severe as originally anticipated and that even the most critical failure of the T₄ bellows would not create a significant unsafe condition.

This information, in conjunction with reports that there have been no reported instances of service difficulty caused by a T₄ sensor failure, indicate that an AD on the subject is not necessary at this time. Accordingly, the agency has determined that the NPRM should be, and hereby is, withdrawn.

The agency will, of course, continue to monitor the service experience of the T₄ temperature sensors and will initiate rulemaking action on this subject should

file 438

PMS REP TERRY GARDINER

2739

JUN

1976 MAY 18 AM 12 27

WE OBJECT TO THE PASSAGE OF SB438. THE HOURS OF BUSINESS ARE OFTEN NOT ALWAYS NEGOTIABLE AND COULD MAKE SERVICE UNAVAILABLE IN MANY AREAS DEALERS ARE FREE AT ANY TIME TO REFUSE TO BUY AN PRODUCTS EXCEPT GASOLINE AND ARE NOT COMPELLED TO BUY ANY OTHER PRODUCTS OR SERVICES IT WOULD TAKE A COURT DECISION IN EACH CASE OF TRANSFER OF OWNERSHIP TO DEFINE UNREASONABLE AND ANOTHER TO DEFINE QUALIFIED WE UNDERSTAND THAT THE MAIN REASON FOR SECTION A-8 WAS TO PROVIDE RIGHTS OF SURVIVORSHIP IF SO WHAT MAKES ANY HEIR A QUALIFIED ASSIGNEE THIS PARAGRAPH EFFECTIVELY ELIMINATES THE COMPANYS RIGHT TO BE SELECTIVE IN CHOOSING A DEALER FOR A RETAIL OUTLET IF PASSED IT CAN ONLY HAVE A DETERIORATIVE EFFECT ON THE QUALITY OF DEALERS AND STATION A DEALER CAN GET AN OUTLET WITHOUT PROPER TRAINING TO MEET THE QUALITY OF HIS PEERS WHICH WOULD MEAN LOWERING THE QUALITY OF SERVICE TO THE PUBLIC THE APPEARANCE OF SERVICE STATIONS IN A COMMUNITY WOULD LIKEWISE SUFFER DUE TO THE PROBABILITY OF AN ASSIGNEE HAVING A LOWER LEVER OF ACCEPTANCE THAN THE COMPANYS ACCEPTED DEALER THE COMPANIES GENERALLY BEING MUCH MORE CONCIOUS OF THE COMMUNITY IMAGE THE VALUE OF GOODWILL IS SO ABSTRACT THAT THERE WOULD ALMOST BE UNIVER SALLY BE DISAGREEMENT OVER IT AND THE DIFFERENCES BEINL RESOLVED IN A COURT OF LAW IN EACH CASE EVEN THEN THE POSSIBILITY OF A FAIR DECISION FOR BOTH PARTIES WOULD BE REMOTE DUE TO THE INABILITY OF ANYONE TO EVALUATE THE DIFFERENCE BETWEEN THE GOODWILL OF THE OPERATOR AND THAT OF THE COMPANIES HALLMARK AND CREDIT CARD SYSTEM GOODWILL HAS NEVER ENTERED INTO THE CHANGE OF DEALERSHIPS IN AHICH THE LEASING FROM THE OIL COMPANIES IS INVOLVED TO

EVEN THEN THE POSSIBILITY OF A FAIR DECISION FOR BOTH PARTIES WOULD BE REMOTE DUE TO THE INABILITY OF ANYONE TO EVALUATE THE DIFFERENCE BETWEEN THE GOODWILL OF THE OPERATOR AND THAT OF THE COMPANIES HALLMARK AND CREDIT CARD SYSTEM GOODWILL HAS NEVER ENTERED INTO THE CHANGE OF DEALERSHIPS IN WHICH THE LEASING FROM THE OIL COMPANIES IS INVOLVED TO INSTITUTE IT TO THE EXTENT OF THIS BILL COULD ONLY GIVE PRESENT DEALERS A BONANZA SINCE THEY DID NOT PAY IT ON THEIR INCEPTION BUT WOULD DEMAND IT UPON DEPARTURE IT WOULD OPEN THE SERVICE STATION BUSINESS TO SPECULATION RATHER THAN TO SOLID SALES AND SERVICE THE SERVICE STATION HAS TRADITIONALLY BEEN ONE OF THE FEW PLACES WHERE A PERSON OF LIMITED MEANS COULD ENTER BUSINESS AND MAKE GOOD IF THIS BILL WERE TO BECOME LAW IT WOULD EFFECTIVELY REMOVE THE GREATER PERCENTAGES OF THESE OPPORTUNITIES AND COULD PLACE THE SERVICE STATION INDUSTRY AT THE MERCY OF BIG BUSINESS WE FEEL WE NEED A BILL RELATING TO FRANCHISE AGREEMENTS BUT MORE CLOSELY RELATED TO A JOINT VENTURE BETWEEN THE COMPANY AND DEALER LEGISLATION COULD ONLY CAUSE FRICTION BETWEEN THE TWO WE APPROXIMATELY 1/3 OF THE ANCHORAGE CHEVRON DEALERS STRONGLY OPPOSE THE PASSAGE OF THIS BILL

B C BYLSMA, E L BRODY, L W MCCONNELL

HARRY K BEESON, LR HAAG JR, EDWARD E CLARK, IW MOORE

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.

PHONE: 526-6440

BUREAU, ALASKA 99501

1 A M E N D M E N T S

2 TO: HCS CSSB 406 (Judiciary)

BY THE JUDICIARY COMMITTEE

3 *Passed*

4 AMENDMENT NO. 1

5 On page 14, between lines 2 and 3, insert:

6 "(c) A person, facility or vessel exempt from this chapter
7 under (a) - (b) of this section may, at his or its option, apply for
8 and obtain a certificate of risk avoidance by complying with the applicable
9 provisions of sec. 40 of this chapter."

10 *Passed*

11 AMENDMENT NO. 2

12 On page 19, line 14, after "charges," insert: "damages,"

13 On page 29, line 8, after "costs.", insert:

14 "That portion of the damages recovered by the state in a
15 civil action brought under sec. 822 of this chapter attributable
16 to costs incurred by the department in the abatement, containment or removal of the
17 pollutant resulting from a discharge of crude oil, refined petro-
18 leum products or their by-products shall be deposited in the coastal
19 protection fund created under AS 30.25.220."

20 *Passed*

21 AMENDMENT NO. 3

22 On page 20, line 29, after "standards", insert:

23 ", including but not limited to partial, complete or
24 defensively placed ballast tanks or systems with respect to (2)(B)(ii)
25 of this subsection,



Maine, Florida + Model Act
HB 34 by Speckwing

Hearings this summer

- ① Fuel cost problem
- ② 1/2" pre-emption

— Page 2 - three requirements of all
Alaska traffic

— Page 3 - unless tug + scort - 3/16/16 requirement
exemption clause

— Insurance system - incentive program
Additional Requirements

— Oil landing facilities

Fuel changes

Page ~~29~~ 29 - New language

Page 21, line 29 - 30 million to 20 million

Page 29, ^{old} Section 7 - ~~deleted~~ - Civil seizure of vessel
Had constitutional problems

Retain authority for violation of criminal laws

Page 21, line 15

1 —
2



A

Article 7 — 3rd party damages ^{references} deleted
+ arbitrators

You can't sue state for faulty cleanup

Oil transporter under existing state law
is strictly liable - just dispute damages

Norm Gossink - Mr. Schowalter

Provision for incentives
Page 20 line 17-25

existing " only allows incentive for
specific ballast tanks

#720
Million

Schie - 2 - double bottoms
6 - ballasts

Gene Wilder

Ker Schowalter - Schie

5
20,000,000

fuel level \$900 - #7

#6 1/2 - #7 1/4 Million - 1969

1/3 of fuel belongs to state

20 companies involved - All majors involved
because of onshore facility

*Gorsuch*A M E N D M E N T

TO: HCS CSSSB 406 (Judiciary)

On page 20, strike out lines 17 - 25, inclusive, and insert:

(ii) partial, complete or defensively placed segregated ballast tanks or systems, the combined capacity of which shall be of sufficient size, as prescribed by the department, so that the tank vessel can operate safely on ballast voyages without recourse to the use of cargo tanks for water ballast; or

(iii) throughout the cargo-carrying length or compartments of the tank vessel: either a double bottom of a minimum height of one-fifteenth of the beam or two meters, whichever is the greater, or a double hull of a minimum of two meters;

SB

407

"An Act relating to the Motor Vehicle Safety Responsibility Act; and providing for an effective date."

5/12/75

COMMITTEE REPORT

HOUSE

Mr. Speaker:

Date 5/14/75

The Committee on JUDICIARY has had SB 407

under consideration. A Majority of the members of the Committee

recommends it DO PASS

recommends it DO NOT PASS

recommends it DO PASS WITH ATTACHED AMENDMENT(S)

recommends it BE REPLACED WITH CS FOR _____ AND THAT

CS FOR _____ DO PASS

"and" recommends it BE REFERRED TO THE _____

COMMITTEE

reports it back WITHOUT RECOMMENDATION

"other"

Members signing the Majority report:

[Signature] _____
[Signature] _____
[Signature] _____

Members NOT concurring in the Majority report:

[Signature] recommends: No Rec

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

[Signature] Chairman

House Judiciary Committee
May 19, 1975

The meeting was called to order at 1:30 p.m. by Chairman Gardiner. All members were present except Mr. Parr.

SCR 15, 17, 19 Rape

Senator Chance briefly explained these resolutions which were then passed out of committee.

SB 182 arrest without warrant

Pat Wellington testified that if an officer does not witness a drunk driving, there is nothing on which he can make an arrest. The drunk in public and drunk on a highway statutes have been overturned by the courts. He was particularly concerned when there had been an accident but no witness.

Line 13: change reasonable to probable.
Line 14 and 15 omit: while under the influence

Several amendments were suggested to close a possible abuse the bill could create by limiting the bill to accidents in which there had been damage to life or property, or a moving violation. Mr. Brown suggested on line 16 add: and the person has been operating a vehicle which has been involved in an accident, or the person has been charged with another offense at a time during which he is alleged to have committed such violation. The amendment failed. Mr. Gardiner suggested on line 14: reasonable (immediately) prior to the arrest - as soon as practicable but in no event more . . . The committee determined to hold the bill to work on further amendment.

SB 407 Motor Vehicle Safety

Alan Compton stated that the bill was to bring the rate and coverage up to date. The present rates were set in 1966. Mr. Brown moved the bill out of committee.

SB 140 am Commission on Administration of Justice

This bill adds members representative of juvenile groups. Mr. Brown moved the bill out of committee.

SB 358 Trust Lands

Mr. Wallace and Senator Sackett testified that the AG had drafted this bill and had his approval. The following amendment was passed: end of (b) add: Such approval shall be by resolution and filed with the department. The bill was moved out of committee.